

**AN INVESTIGATION INTO THE RESPONSES OF THE CONSTRUCTION
INDUSTRY TO PREFERENTIAL PROCUREMENT IN SOUTH AFRICA**

By

KAHILU KAJIMO-SHAKANTU

**A thesis submitted for the degree of
DOCTOR OF PHILOSOPHY**

**In the Department of Construction Economics and Management
Faculty of Engineering and the Built Environment
University of Cape Town**

December 2007

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

Declaration

I declare that the contents of this thesis are entirely my own work, except for the specific and acknowledged references to the published work of others made in the text.

To the best of my knowledge and belief, it contains neither material previously published by another person nor material to which a substantial extent has been accepted for the award of any other degree of the university.

Candidate: Kahilu Kajimo-Shakantu

Signed at: this Day of 2007.

Supervisor: Dr David Root

Signed at: this Day of 2007.

Abstract

To reduce socio-economic imbalances caused by the *apartheid* system, the RSA democratic government has been playing an interventionist role in the economy since 1994. The focus of this has been twofold: to provide opportunities to historically marginalised and disadvantaged groups whilst fostering economic growth. In this vein, public procurement has been used as a medium for delivering some of the socio-economic objectives such as black economic empowerment. By leveraging its large procurement capability, government is applying preferencing with its associated legislation to encourage the construction industry to exhibit behaviours that are supportive of its socio-economic agenda. Notwithstanding, the impact of preferential procurement policies on both the established and emerging firms and indeed how the firms respond in terms of their actions and practices is not well understood. The aim of this research is to establish a base level understanding of the influence of preferential procurement policies on construction firms with a view to contributing to theory development. The fundamental premise of this thesis is that preferential procurement policies are not neutral, but have distributive consequences. A review of the literature could not establish a coherent and generally acceptable theoretical framework that guides preferential procurement policies in practice. Rather, it established that the concept of preferential procurement is contested by different and often incompatible theoretical economic and moral assumptions. Consequently the research proposes a triadic analytical framework comprising elements of institutional incentive, strategy and conflict theory perspectives to enable the problem be explored both conceptually and empirically. A grounded theory approach was adopted within a broadly phenomenological paradigm. Data was collected using semi-structured interviews held with 33 respondents from 26 construction firms and 4 client organisations in Cape Town. The findings show that while public procurement has potential as a vehicle for delivering socio-economic objectives, its potential is constrained to a large extent by the perverse incentives inherent in the preferential procurement systems. Firms employ a variety of strategies to take advantage of the incentives and disincentives provided by the preferential procurement institutional framework. A key implication is that preferential procurement policies merely redefine the actors and modes of operations rather than eliminating conflict. The research contributes to an enhanced understanding of the dual role of government as regulator and dominant client to the industry in its quest to harness the potential of public procurement as an instrument of socio-economic policy.

Dedication

To my Mum and Dad:

Mrs. Dorcas Manungo Ndulinga Kajimo & Rev. David Ben Mutondo Kajimo, for making me in more ways than one and teaching me the gift of gratefulness. I love you. *Glory be to God for his unending and abundant love, grace and sustenance. Thank you for giving so much to me.*

And ...

To the memory of Enoch Ndulinga and Annie Kashivi Litope.

Acknowledgement

I have been exceedingly blessed to be surrounded by people who have encouraged and supported me in my endeavours. I have enjoyed overwhelming support from family, mentors and friends especially in the creation of this work – *I say a big thank you to you all* and God bless! I am particularly grateful to the following:

Dr. David S. Root: My sincere gratitude for the wonderful supervision and guidance you provided me throughout this study. It took up a lot of your time but, I always got feedback and looked forward to our interesting ‘chats’! I have benefited a great deal from the interaction which has helped me develop a greater appreciation of the research process.

Associate Professor Dr. Winston Shakantu: Thanks for being an ‘unofficial co-supervisor’ and for assisting me so graciously - including reading and commenting on my interview transcripts and draft thesis. I appreciate our numerous and exciting brain-storming sessions ...at the office, in the car and at home.

Dr. Kai Rintala: for the input during the early stages of the research and for making me think hard about the ‘best card’ to use in justifying my work. Dr Paul Musonge: for the encouragement and tips. Dr. Arlene Archer, Dr. Moragh Paxton and Dr. Rochelle Kapp: for the opportunity that exposed me to different writing genres and enhanced my appreciation of multidisciplinary approaches. Dr Jacques de Wet: for running a wonderful qualitative research methodology module. Ron Watermeyer: for providing me with some useful reference material. The field study participants: for the great contributions.

Family and friends – present and past: My Winston, for being such an *awesome* companion and for believing in my God-given abilities! My adorable Mum and Dad - the 2Ds - for ever nurturing, loving and supporting me. My dearest sisters, brothers, cousins, nieces and nephews and ‘their’ families and all my children for being a big part of my life. My lovely parents, Dr T. K. & Mrs M. Taylor, for embracing me. Rev A. & Mrs C. Lewin for opening up their hearts. Moe-ain, Gadija, Betty, Ademola, James, Njeri, Clement, Emmanuel, Wale, Vut, Foozy, Salome, Moonga, Kaluba, Mpinga, Jumo, Lumbwe, Logan, Mikey, Fleefort, Ian, Mwansa, Evelyn, Thoko and Pete: for the gift of friendship.

Sincere gratitude to the University of Cape Town Post-graduate Funding Office and the Council for Scientific and Industrial Research (CSIR) for the financial support towards this study. Thanks to the Department of CEM at UCT where the research was conducted. Last but not least, a special thanks to the three examiners in Australia, UK and Singapore respectively for giving me overwhelmingly positive comments and the ‘thumbs-up’.

Table of Contents

Declaration	i
Abstract	ii
Dedication	iii
Acknowledgement	iv
Table of Contents	v
List of tables	xi
Table of Figures	xii
Table of Figures	xii
Abbreviations and Acronyms	xiii
Glossary of Terms	xv
CHAPTER 1: INTRODUCTION AND BACKGROUND	1
1.0 INTRODUCTION	1
1.1 BACKGROUND TO THE RESEARCH	1
1.1.1 Linking Affirmative Action to Public Sector Procurement	4
1.1.2 Historical Background of Socio-Economic Imbalances in RSA	4
1.1.3 Metaphor of the Two Economies: A Consequence	8
1.1.4 Social and Economic Transformation Imperative	9
1.2 RESEARCH FOCUS	11
1.2.1 BEE Legislative Framework and Public Procurement	11
1.2.2 Construction Industry as the Context of the Study	12
1.2.3 Characteristics that make the Industry amenable to Preferential Procurement Policies	14
1.3 PROBLEM FORMULATION	16
1.3.1 Statement of the Problem	17
1.4 RESEARCH AIMS AND OBJECTIVES	18
1.5 RESEARCH QUESTIONS	18
1.6 JUSTIFICATION FOR THE RESEARCH	19
1.6.1 Significance of the Research Area	19
1.6.2 Relative Neglect of the Particular Research Problem	19
1.6.3 Policy and Practical Relevance of the Research Findings	20
1.6.4 Relative Neglect of Grounded Theory Methodology	21
1.7 RESEARCH METHODOLOGY OUTLINE	21
1.8 SCOPE AND KEY ASSUMPTIONS	22

1.9	THESIS STRUCTURE	22
1.10	CONCLUDING REMARKS	23
CHAPTER 2: THE POTENTIAL FOR PUBLIC PROCUREMENT- A REVIEW		25
2.0	INTRODUCTION	25
2.1	CONCEPTUALISING PUBLIC PROCUREMENT	25
2.1.1	Public Procurement as a Significant Government Function	25
2.1.2	Goals of Public Procurement	26
2.1.3	An Overview of Procurement Reforms	27
2.2	PUBLIC PROCUREMENT AS AN INSTRUMENT OF SOCIAL POLICY	28
2.2.1	The Procurement-Affirmative Action Linkage	29
2.3	THE CONCEPT OF PREFERENTIAL PROCUREMENT	30
2.3.1	Schemes and Methods for Implementing Preferential Procurement	31
2.4	AFFIRMATIVE ACTION POLICIES IN THE USA	34
2.4.1	Origins of Affirmative Action in the USA	34
2.4.2	Defining the Concept of Affirmative Action	34
2.4.3	Affirmative Action Policy Debates in the USA	36
2.4.5	Current Research on Minority Business Enterprise Programmes	38
2.4.6	Affirmative Action Policy: Current Concerns	41
2.5	PREFERENTIAL POLICIES IN MALAYSIA	42
2.5.1	Origins of Preferential Policies in Malaysia	42
2.5.2	The New Economic Policy: NEP	44
2.5.3	Preferential Policies in Government Procurement	45
2.5.4	Policy Context of Preferential Policies and Outcomes	48
2.5.5	Preferential Policies: Current Concerns	50
2.6	THE EVOLVING CONCEPT OF BEE IN SOUTH AFRICA	51
2.6.1	The B-BBEE Act and Codes of Good Practice	53
2.6.2	Significance of Public Procurement to BEE Objectives	56
2.6.3	The Constitutional Basis of Procurement	57
2.6.4	Green Paper on Public Sector Procurement	57
2.6.5	The Preferential Procurement Policy Framework Act 2000	58
2.6.6	Preferential Procurement in the Construction Industry	59
2.7	CONSTRUCTION INDUSTRY DEVELOPMENT	63
2.7.1	Relevance of Contractor Registration and Grading	63
2.7.2	Emerging Contractor Development Programme (ECDP)	66

2.7.3	DPW Contractor Incubator Programme	67
2.7.4	The Expanded Public Works Programme	67
2.8	THEORIES FOR UNDERSTANDING PREFERENTIAL PROCUREMENT	68
2.9	CONCLUDING REMARKS	72
CHAPTER 3: DEVELOPMENT OF A TRIADIC ANALYTICAL FRAMEWORK		74
3.0	INTRODUCTION	74
3.1	JUSTIFICATION FOR A MULTI-DISCIPLINARY APPROACH	74
3.2	POSITIONING THE ANALYTICAL FRAMEWORK.....	75
3.3	AN OVERVIEW OF THEORY OF INSTITUTIONAL INCENTIVES.....	76
3.3.1	Theory of Institutions	76
3.3.2	Institutional Incentives Framework.....	77
3.4	OVERVIEW OF THEORIES OF CONFLICT	79
3.4.1	Origins of Theories of Conflict.....	79
3.4.2	Definition and Sources of Conflict.....	79
3.4.3	Context and Levels at which Conflict Occurs.....	79
3.4.4	Basic Tenets of Conflict Theory	80
3.5	OVERVIEW OF THEORIES OF STRATEGY	82
3.5.1	Current View of Strategic Management	83
3.5.2	Views on Formal Theories of Strategic Management	84
3.6	RE-CONCEPTUALISING THE RESEARCH	86
3.6.1	Organisational Responses to Institutional Changes	87
3.6.2	Implications of Preferencing for Construction Firms	88
3.7	RESTATEMENT OF THE RESEARCH QUESTIONS	92
3.8	CONCLUDING REMARKS	93
CHAPTER 4: PHILOSOPHICAL AND METHODOLOGICAL FRAMEWORK.....		94
4.0	INTRODUCTION	94
4.1	ONTOLOGICAL AND EPISTEMOLOGICAL ASSUMPTIONS	94
4.2	THEORETICAL PERSPECTIVES	98
4.2.1	The Positivist Paradigm	98
4.2.2	The Interpretivist Paradigm.....	101
4.2.3	Selecting an Appropriate Theoretical Perspective.	104
4.3	RESEARCH METHODOLOGY.....	107
4.3.1	Selecting Grounded Theory Approach for the Research	108

4.4	RESEARCH METHODS	113
4.4.1	Data Collection Techniques	115
4.5	RESEARCH PROTOCOL AND ETHICAL CONSIDERATIONS	119
4.6	GROUNDING THEORY DATA ANALYSIS TECHNIQUES.....	121
4.6.1	Close Reading of the Data.....	122
4.6.2	The Analytical Process: Coding and Categorising Data:	122
4.7	METHODOLOGICAL LIMITATIONS.....	128
4.8	CONCLUDING REMARKS	129
	CHAPTER 5: RESULTS PRESENTATION AND DISCUSSION	130
5.0	INTRODUCTION	130
5.1	THE FIELD STUDY SETTING	130
5.1.1	Gender and Racial Profiles of Participants	130
5.1.2	Industry Experience and Positions of Respondents.....	131
5.1.3	Ownership and Management Structures	133
5.1.4	CIDB Grading of Firms	133
5.1.5	Historical backgrounds of firms.....	134
5.1.6	Year of Establishment of Firms.....	134
5.2	PHENOMENON 1: POLICY IMPLEMENTATION.....	135
5.3	PHENOMENON 2: CONTRACTOR PERCEPTIONS	138
5.4	PHENOMENON 3: OPERATIONAL CONTEXT	144
5.4.1	Financial Related Factors	144
5.4.2	Skills Related Factors	146
5.4.3	Tender Adjudication and Contract Administration.....	149
5.4.4	Opportunistic Behaviours.....	151
5.4.5	Locality problems.....	153
5.4.6	Preferential procurement: Policy and Practice	156
5.5	CONCLUDING REMARKS	157
	CHAPTER 6: DISCUSSION AND INTERPRETATION OF RESULTS	159
6.0	INTRODUCTION	159
6.1	PHENOMENON 4: OPPORTUNISM IN COMPETITIVE TENDERING	159
6.2	PHENOMENON 5: CONSULTANCY AND MENTORING	162
6.3	PHENOMENON 6: CONTRACTOR REGISTRATION AND GRADING	165
6.4	PHENOMENON 7: USE OF HDEs IN SUBCONTRACTING	173
6.5	PHENOMENON 8: ENGAGEMENT IN JOINT VENTURES (JVS)	176

6.6	PHENOMENON 9: OWNERSHIP AND MANAGEMENT STRUCTURES ..	189
6.7	PHENOMENON 10: CREATING BEE COMPANIES.....	191
6.8	AN OVERVIEW OF STRATEGIES ADOPTED BY FIRMS.....	197
6.9	TOWARDS A GROUNDED THEORY OF INDUSTRY REACTIONS ...	202
6.9.1	Identifying the Core Category	203
6.9.2	Developing Theoretical Conjectures	205
6.9.3	Propositions.....	206
6.10	CONCLUDING REMARKS	207
CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS.....		209
7.0	INTRODUCTION	209
7.1	RESEARCH CONTEXT AND PROBLEM RESTATEMENT	209
7.2	RESEARCH AIMS AND OBJECTIVES RESTATED	210
7.3	RESEARCH QUESTIONS RESTATED.....	211
7.3.1	Main Research Question	211
7.3.2	Sub-questions.....	211
7.4	CONCEPTUAL AND THEORETICAL ISSUES REVISTED.....	211
7.4.1	Theoretical issues raised in chapter one	211
7.4.2	Conceptual and theoretical issues emanating from chapter two....	212
7.4.3	Development of an analytical framework in chapter three	214
7.4.4	Research Philosophical and Methodological Orientation.....	216
7.5	SUMMARY OF KEY RESEARCH FINDINGS	217
7.5.1	Objective one.....	218
7.5.2	Objective two	218
7.5.3	Objectives three and four.....	219
7.6	OVERVIEW OF THE SUBSTANTIVE THEORY DEVELOPED	223
7.7	OVERALL CONCLUSIONS: IMPLICATIONS.....	224
7.8	CONTRIBUTION TO KNOWLEDGE	228
7.9	RECOMMENDATIONS.....	229
7.9.1	Recommendations for Public Sector Client bodies	229
7.9.2	Recommendations for Government.....	230
7.9.3	Recommendations for the CIDB	230
7.9.4	Recommendations for Construction Firms.....	230
7.10	AREAS FOR FURTHER RESEARCH	231

7.11	A CRITICAL REFLECTION OF THE RESEARCH PROCESS	231
8.0	REFERENCES	234
9.0	APPENDICES	265
APPENDIX 1:	DESCRIPTIONS OF THE BEE CODES	265
APPENDIX 2:	CURRENT STATUS OF CIDB CONTRACTOR REGISTERS	266
APPENDIX 3:	CIDB JV GRADING GUIDELINES	270
APPENDIX 4:	INTERVIEW GUIDE 1 (FOR CONTRACTORS)	271
APPENDIX 5:	INTERVIEW GUIDE 2 (CONTRACTORS' FOLLOW-UP)	273
APPENDIX 6:	INTERVIEW GUIDE 1 (FOR CLIENTS)	274
APPENDIX 7:	SAMPLES OF 2 INTERVIEW TRANSCRIPTS	275
APPENDIX 8:	PARTICIPANT'S CONSENT FORM	286
APPENDIX 9:	SUMMARY SHEET OF STUDY PARTICIPANTS	287
APPENDIX 10:	NUMBER OF QUALIFIED PERSONS	288

List of tables

Table 2.1	Models and Methods for Implementing Preferencing.....	31
Table 2.2	Generic BEE Balanced Score Card	53
Table 2.3	BEE Enterprise Definitions	55
Table 2.4	Organs of the State Implementing Preferential Procurement	58
Table 2.5	CIDB Contractor Grading.....	64
Table 3.1	Positive and Negative Values of Conflict	81
Table 3.2	Strategic Responses to changing Institutional Frameworks	87
Table 3.3	Ways of Concealing Non-conformity.....	91
Table 4.1	Implications of the Positivist and Interpretivist Paradigms	104
Table 4.2	Types and Characteristics of Data.....	113
Table 4.3	Typology of Sampling Strategies in Qualitative Inquiry	116
Table 4.4	Fragmentation of Data and Conceptual Labelling.....	123
Table 4.5	Open Coding Template Sample.....	124
Table 4.6	Category, Property and Dimension.....	124
Table 4.7	Partial Conceptualisation of the category of Joint Venture	125
Table 4.8	Overview of the Substantive Theory	127
Table 4.9	Summary of Grounded Theory Data Analysis Process.....	128
Table 5.1	Racial groups and Gender of Participating Contractors.....	131
Table 5.2	Industry working experience of Contractors.....	131
Table 5.3	Positions Held by Participating Contractors by Gender and Race ..	132
Table 5.4	Industry Experience and Designations of Client Representatives..	133
Table 5.5	Ownership and Management Structures of Firms.....	133
Table 5.6	CIDB Grading (GB) of Participating Contractors.....	134
Table 5.7	Firms Registered in more than 1 CIDB Grading	134
Table 5.8	Year of Establishment of Firms.....	135
Table 5.9	Summary of Locality Problems on Public Sector Projects	156
Table 6.1	Contractors Awarded Tenders in the Western Cape	171

Table of Figures

Figure 2.1	Models for Participation in Public Procurement	60
Figure 2.2	The 90/10 and 80/20 Points Scoring System.....	62
Figure 2.3	Information Required for Assessing Contractors' Grading.....	65
Figure 2.4	Conceptualisation of the Research Process	71
Figure 3.1	Location of the Analytical Framework	76
Figure 3.2	Alternative Routes for Achieving the Realised Strategy.....	83
Figure 4.1	Main criticisms of positivism.....	101
Figure 4.2	Methodological Approach	112
Figure 4.3	Variations in the Degree of Structure of Interviews.....	117
Figure 4.4	Theory, Data Generation and Analysis Process	121
Figure 6.1	CIDB & Contractors' Views on Contractor Registration	166
Figure 6.2	Reasons for and against Joint Ventures	180
Figure 6.3	Empowerment Ownership Structures	195
Figure 6.4	Cascading Pyramid of Company Ownership	196
Figure 6.5	Strategies and Tactics Employed by Construction Firms.....	198
Figure 6.6	Mini-integrative Data Analysis Framework.....	204
Figure 6.7	Cyclic Nature of the Effects of Preferential Procurement Policies..	206
Figure 7.1	Iterative Theory Generation Process	223

Abbreviations and Acronyms

ANC	African National Congress
ASGISA	Accelerated and Shared Growth Initiative of South Africa
B-BBEE	Broad Based Black Economic Empowerment
BEE	Black Economic Empowerment
BEECOM	Black Economic Empowerment Commission
BIFSA	Building Industries Federation of South Africa
CE	Civil Engineering
CETA	Construction Education and Training Authority
CIDB	Construction Industry Development Board
CLO	Community Liaison Officer
CMC	Cape Town Metropolitan Council
CSIR	Council for Scientific and industrial Research
DETR	Department of the Environment, Transport and the Regions
DPW	Department of Public Works
DTI	Department of Trade and Industry
ECDP	Emerging Contractor Development Programme
EE	Electrical Engineering
EEA	Employment Equity Act
EO	Executive Order
EPWP	Extended Public Works Programme
ERF	Economic Revision Focus
GB	General Building
GDP	Gross Domestic Product
GEAR	Growth, Empowerment and Redistribution
GFCF	Gross Fixed Capital Formation
RSA	Republic of South Africa
HDI	Historically Disadvantaged Individual

HEE	Historically Empowered Enterprise
HEI	Historically Empowered Individual
ICLEI	International Council for Local Environmental Programmes
JV	Joint Venture
MBE	Minority Business Enterprises
ME	Mechanical Engineering
NDP	National Development Policy
NEP	New Economic Policy
NIE	New Institutional Economics
NPAT	Net Profit After Tax
PDE	Previously Disadvantaged Enterprise
PDI	Previously Disadvantaged Individual
PE	Potentially Emerging
PPPF	Preferential Procurement Policy Framework
PWEA	Public Works Employment Act
RDP	Reconstruction and Development Programme
SARB	South African Reserve Bank
SARS	South African Revenue Service
SBA	Small Business Act
SMME	Small Medium and Micro Enterprises
StatsSA	Statistics South Africa
SW	Specialist Work
UNCHS	United Nations Commission for Human Settlements
UNDP	United Nations Development Programme
USA	United States of America
WBE	Women-Owned Business Enterprises

Glossary of Terms

Axial coding: This step in the coding process follows open coding. Here the researcher takes the categories of open coding, identifies one as a central phenomenon, and then returns to the data to identify (a) what caused this phenomenon to occur, (b) what strategies or actions actors employed in response to it, (c) what context and intervening conditions influenced the strategies and (d) what consequences resulted from these strategies.

Category: This is a unit of information analysed in grounded theory research. It is composed of events, happenings, and instances of phenomenon and given a short label.

Central phenomenon: This is an aspect of axial coding and formation of the visual theory, model, or paradigm. In open coding, the researcher chooses a central category around which to develop the theory.

Coding paradigm or logic diagram: In axial coding, the central phenomenon, causal conditions, context, intervening conditions, strategies, and consequences are portrayed in a visual diagram.

Consequences: In axial coding, these are outcomes of strategies taken by participants in the study. These outcomes may be positive, negative, or neutral.

Constant comparative: This was an early term in grounded theory research that referred to the researcher identifying incidents, events, and activities and constantly comparing them to an emerging category to develop and saturate the category.

Context: In axial coding, this is the particular set of conditions within which strategies occur. These are specific in nature and close to the actions and interactions.

Generate or develop a theory: Grounded theory research is the process of developing a theory, not testing a theory. Researchers might begin with a tentative theory they want to modify or no theory at all with intent of “grounding” the study in views of participants.

Grounded theory study: In this type of study, the researcher generates an abstract analytical schema of a phenomenon, a theory that explains some action, interaction or process.

Intervening conditions: In axial coding, these are the broader conditions - broader than context – within which the strategies occur. They might be social, economic, and political forces, for example, that influence the strategies in response to the central phenomenon.

Memoing: This is the process in grounded theory research of the researcher writing down ideas about the evolving theory.

Open coding: This is the first step in the data analysis process for a grounded theorist. It involves taking data and segmenting them into categories of information.

Propositions: These are hypotheses typically written in a directional form that relate categories in a study. They are written from the axial coding model or paradigm.

Selective coding: This is the final phase of coding the information. The researcher takes the central phenomenon and systematically relates it to other categories, validating those relationships and filling in categories that need further refinement and development.

Strategies: In axial coding, these are specific actions or interactions that occur as a result of the central phenomenon.

Substantive-level theory: This is a low level theory that is applicable to immediate situations. This theory evolves from the study of a phenomenon situated in “one particular situational context”. Researchers differentiate this form of theory from theories of greater abstraction and applicability, called midlevel theories, grand theories or formal theories.

Theoretical sampling: In data collection for grounded theory research, the investigator selects a sample of individuals to study based on their contribution to the development of theory.

[Definitions above have been provided by Cresswell (1998)]

Phenomena: The important analytic ideas that emerge from the data. They depict the problems, issues, concerns and matters important to those being studied (Strauss and Corbin, 1998).

Dominant strategy: This is strategy that is the best decision for the firm, no matter what decision its competitor makes.

Hold-up problem: This is a type of problem that arises when a party in a contractual relationship exploits the other party's vulnerability due to relationship specific assets.

Moral hazard: These are opportunities for shirking in one's performance due to hidden action or hidden information which cannot be prevented by contracts.

Switching costs: Refer to costs incurred by buyers when they switch to a different supplier.

Transaction costs: This is a concept, developed by Ronald Coase, which denotes the costs to using the market – such as costs of transacting exchanges.

[Definitions above provided by Bensako *et al* (2000)]

Broad-Based Black Economic Empowerment: means the economic empowerment of all black people including women, youths, people with disabilities and people living in the rural areas through diverse but integrated socio-economic strategies (RSA, 2003).

Black economic Empowerment: Is defined as an integrated and socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people who manage, own and control the country's economy, as well as significant decreases in income inequalities (DTI, 2003).

Fronting: This means any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments. Fronting structures generally claim a higher BEE status than the actual substantive economic benefits flowing to black beneficiaries would suggest. (RSA, 2007b).

Hidden Action Problem: This is also known as Moral hazard and refers to the difficulty and costliness of observing, monitoring or assessing another party's efforts i.e. unobserved action. Moral hazard can create adverse selection (Campbell, 2006).

Hidden Information / Characteristic Problem: Also known as Adverse Selection refers to the situation where information possessed by one party is concealed from others yet, the welfare of others depends on that information i.e. private or hidden knowledge (Campbell, 2006).

Joint Ventures: Are normally, unincorporated bodies, regarded in law as partnerships in which the partners are jointly and severally liable for the acts, neglects and omissions of the partnership. A joint venture is normally formed ad hoc for a specific project, in which two or more parties share the obligations, risks and rewards (RSA, 2007b).

Opportunism: Is deceitful behaviour intended to improve the welfare of a person, who knows something that others do not, at the expense of others (Ostrom *et al.*, 1993).

Perverse Incentives: Are rewards and punishments that are built into a system and blocks the achievement of that system's goals (Caplow, 1994).

Shirking: Is where a party 'free-rides' by letting others perform the work while they share in the benefits produced because its unlikely that the individual's contribution will bring them benefits that exceed their costs (Ostrom *et al.*, 1993).

CHAPTER 1: INTRODUCTION AND BACKGROUND

1.0 INTRODUCTION

The aim of the first chapter is to introduce the broad area of the research and develop an argument as the basis for the subsequent chapters. It starts by presenting the wider research context expressed by concepts such as affirmative action, preferential policies and black economic empowerment (BEE) and how these relate to government supply chain or public sector procurement systems. The broad area of the study then leads to the location of the research problem within the context of targeted procurement in the RSA construction industry. The purpose of the research, the research questions, justification and an outline of the methodology are also presented. Delimitation of scope and key assumptions followed by the thesis structure are given towards the end of the chapter.

1.1 BACKGROUND TO THE RESEARCH

There are two main reasons that increasingly justify state intervention in the economy. One is to correct instances of market failure i.e. efficiency and the other to achieve a more equitable distribution of income and wealth i.e. equity (Muradzikwa *et al.*, 2004; Cook, 1999; Przeworski, 1998). The overall aim of state intervention is to influence the allocation of scarce resources among competing users. Notwithstanding, many writers have shown that the relationship between the government and the economy or the role that government should play in the economy is surrounded by controversy (Mohamed, 2004; ERF, 2004; Przeworski, 1998; Open University, 1993; Streeten, 1992; Papanek, 1992; Ratzka, 1991; Posner, 1987; Sen, 1989; Wolf, 1979). The debates have gone round in circles, with arguments about market failure being countered by claims about regulatory failures (Przeworski, 1998; Streeten, 1992).

The arguments about regulatory failure include that markets are able to allocate resources and produce goods and services needed by consumers more efficiently than the state (ERF, 2004; Przeworski, 1998). According to Papanek (1992), massive state intervention does not usually benefit the poor or majority for three major reasons:

- i) The resulting distortions of the market slows economic growth, which harms everyone;
- ii) With slow economic growth, the elite are naturally far more reluctant to support any transfer to the poor; and
- iii) When economic decisions are made through a political process, it's naturally the politically powerful who benefit the most.

Notwithstanding the criticisms, government will always be involved in the economy, in the first instance as an umpire. This is because government has the responsibility of maintaining order and the rule of law, regulating markets and mediating conflicts between people in markets or those affected by market activities (Mohamed, 2004; Cook, 1999; Ohlin, 1992; Streeten, 1992; Ratzka, 1991). Well functioning institutions created by government of comprehensive legislation, courts and appeals and police are a fundamental requirement for encouraging economic activity (Mohamed, 2005; Streeten, 1992; Ratzka, 1991). Such systems are essential to protect the rights of producers, consumers, sellers and buyers of goods and services, to allow them to make contracts and to guarantee ownership rights which reduce most of the uncertainties inherent in transactions (Cook, 1999; Ostrom *et al.*, 1993; Streeten, 1992; Ratzka, 1991; North, 1990).

Since the 1990s, the view that markets are efficient even in the absence of 'traditional' failures now appears to be waning (Przeworski, 1998). There is no presumption that markets are efficient, because externalities result from most individual actions, information is asymmetric, market power is not ubiquitous and rents abound (Przeworski, 1998). As Przewoski argues, these are not imperfections and there is no unique market instead, a range of possible institutional arrangements exist, each with different consequences. This argument supports the view that some forms of state interventions are often inevitable (Mohamed, 2005, Ratzka, 1991) but the specific issue of state intervention particularly through affirmative action and preferential procurement is explored in detail later in this thesis.

In the second instance, government has a role to play as an active market participant in the economy. It is an important customer for public works, goods and services and as a supplier of goods and services, many of which are vital for the functioning of the economy (Mohamed, 2004; Bayat *et al*, 2004; Morand, 2003; Thai, 2001; Gounden, 2000; Govender and Watermeyer, 2000). Throughout the world, governments have generally accepted the responsibility of ensuring the delivery of services such as education, health, security, water, sanitation as well as building and maintaining infrastructure like schools, housing, hospitals, bridges and roads (Rogerson, 2004; Govender and Watermeyer, 2000). Thus, government as a large buyer of goods, services and works often enters into contractual arrangements with the private sector in order for the private sector to provide the services and perform the works on its behalf (Rogerson, 2004; McCrudden, 2004; Governder and Watermeyer, 2000).

Public procurement is therefore an important activity for any government which contributes significantly to the Gross Domestic Product (GDP) (McCrudden and Gross,

2006; Rogerson, 2004; Morand, 2003; Marion, 2005; Fee *et al.*, 2002; Thai, 2001; Bajari and Tadelis, 2001). Public procurement has two goals: primary and secondary (Thai, 2001; McCrudden, 1995; Arrowsmith, 1995). The primary goal relates to the sourcing of services, goods and works to achieve good governance. The secondary goal relates to the use of public procurement to achieve a wide range of economic and social objectives including (McCrudden, 1995:5);

- i stimulating economic activity;
- ii protecting national industry against foreign competition;
- iii improving the competitiveness of certain industrial sectors;
- iv remedying regional disparities; and
- vi achieving more directly social objectives such as;
 - fostering job creation, to promote the use of local labour,
 - encouraging equality of opportunity between men and women,
 - improving environmental quality,
 - promoting the increased utilisation of the disabled in employment and
 - prohibiting discrimination against minority groups.

In agreement, Watermeyer (2002:210) emphasises that “procurement provides business and employment opportunities and, depending on how it is structured and conducted, can be used as an instrument of government policy to facilitate social and economic development”. As a major client to most economic sectors, government can leverage its large purchasing capability to influence the behaviour of economic participants and outcomes (McCrudden, 2004; Thompson, 2004; Bayat *et al.*, 2004; Engdahl and Hauki, 2001; Gounden, 2000; Watermeyer, Gounden *et al.*, 1998), particularly in industries such as defence and construction.

Indeed, many studies suggest that several developed and developing countries attempt to use procurement as a vehicle to achieve a variety of socio-economic objectives (Rogerson, 2004; Govender and Watermeyer, 2001; Arrowsmith, 1995). Examples of countries include; the UK, India, Malaysia, Canada, USA, South Africa, Northern Ireland, Spain, Sri Lanka, Nigeria, Namibia, Brazil, Philippines, Singapore and Botswana (Rogerson, 2004; Sowell, 2003; Govender and Watermeyer, 2000; 2001; McCrudden, 1995). Hence, it is common to find public procurement being used in some countries to support goals of affirmative action.

1.1.1 Linking Affirmative Action to Public Sector Procurement

Affirmative action policies aimed at tackling discrimination and achieving greater equality have been notably linked to public procurement (McCrudden, 2004). Attempts to link the issues of social equity with public sector procurement have a long history and mostly originated in the 19th century in the USA, England and France (McCrudden, 2004; Arrowsmith, 1995). Procurement preferential schemes were later widely introduced in the 1930s to assist areas that were affected by the Great Depression such as in the USA to recover and after the World War II, other parts such as Europe adopted similar schemes (Arrowsmith, 1995).

For most countries, including those that adopted the 'affirmative-procurement linkage' later, public sector contracts were mostly used to address rising unemployment (McCrudden, 2004). The use of public procurement to promote objectives such as labour standards, employment and needs of the disabled has continued to the present day (McCrudden, 2004). In relation to affirmative action, public sector procurement is generally seen as a vehicle for dealing with discriminatory barriers by opening up market opportunities for historically excluded groups of disadvantaged individuals and firms (Ram *et al.*, 20002; Watermeyer, 2000; Boston 1999; Gounden 1997; Bates and Williams, 1995).

One of the underlying regulatory pillars of affirmative action policies has been the 'attaching of conditions' to government contracts to achieve equitable employment or participation of minority i.e. women-owned and black-owned businesses (McCrudden, 2004). This approach reflects the 'carrot and stick' or 'reward and punish' model inherent in most government affirmative policies (Madi, 1998). The 'carrot and stick' approach is underpinned by government's dual role of regulator and client previously described (McCrudden, 2004; Govender and Watermeyer, 2000). However, Ohlin (1992) cautions that government can play an important role in socio-economic development because in principle it has a monopoly of coercive power yet, the power can either hinder or further the socio-economic transformation process. Excessive government interference may reduce incentives and hinder the participation of other players in the economy such as the private sector. To understand the procurement and socio-economic linkage in RSA, it is important to first place the country in a historical context.

1.1.2 Historical Background of Socio-Economic Imbalances in RSA

RSA has one of the most unequal societies in the world owing to its historical background (UNDP, 2003). Prior to 1994, governments were formed against a backdrop of the hegemony of occupationists and colonialists for over 350 years (Iheduru, 2004; Gelb,

2003). The hegemony was exacerbated by the coming to power of the Nationalist Party in 1948 and the introduction and vigorous implementation of *apartheid*, a racial separatist ideology to the development of RSA's population (Butler, 2006c; Southall, 2004; Iheduru, 2004; Msimang, 2001; Edigheji, 1999).

When the Nationalist Party took over power from the British, the State focused on giving assistance to Afrikaners (White South African racial group referred to as the minority group) to narrow the economic inequality between them and the English speaking Whites (Iheduru, 2004). After 1948, an expansion of the public sector was undertaken to increase Afrikaner control over the economy (Southall, 2004). During the period 1946 to 1973, the share of state corporations in gross fixed investments in the economy increased from 6.2% to 11.2% with Afrikaner businessmen being appointed to key positions in government and public corporations (Southall, 2004).

The Afrikaners both as an ethnic and racial group took control of the State machinery and used their monopoly of political power to bring about upward social mobility for themselves at the expense of other groups (Charlton and van Niekerk, 1994). The legal codes of the country categorised people as White, Coloured, Indian/Asian and Africans, with varying levels of disadvantage among the latter three groups (Engdahl and Hauki, 2001; Msimang, 2001). After 1994, the generic term black has been used to refer to the latter three groups although the historical terms are still used to differentiate among various groups classified collectively as black (RSA, 2003).

The hallmark of the pre-1994 era was the marginalisation and exclusion of the majority of the population, i.e. black people from the political, social and economic activities of the country (Alexander, 2007; Dekker, 2004; Voight, 2003; Steyn, 2004; van der Nest, 2004; DTI, 2003; ANC, 1994). According to Wilmore (1997), some scholars suggest that severe ethnic and racial tension often result from various groups competing for limited resources. According to this view, all discrimination by race or ethnic groups originates through this process in which groups mobilise political and economic resources to further their material interests. The goal of such actions is the exclusion of the competing groups and/or the creation of a 'caste' system that provides the dominant group with preferential treatment (Wilmore, 1997). Exclusion takes various forms including, exclusion from land, other productive assets, markets for goods and labour markets (Wilmore, 1997) as the South African case discussed below shows.

By the late 1980s, an estimated 1300 discriminatory and oppressive laws had been enacted and vigorously enforced by the State (Iheduru, 2004). These applied mainly in the areas of ownership and control of businesses, employment, skills development, and

access to basic social and infrastructural services (DTI, 2003) creating the phenomenon of marginalisation. Marginalisation invariably results in disproportionate and skewed distribution of wealth (Strategic Procurement Systems, 2007; Wilmore, 1997). Some of the discriminatory pieces of legislations, which have since been abolished, and their effects are discussed below.

Land Related Laws

Prior to 1994, land ownership for black people was restricted to certain specified areas in the country called 'Bantustans' (Strydom, 2005; Steyn, 2004; Nduru, 2004; Gelb, 2003). The 1913 Land Act prohibited black people from purchasing land outside the demarcated 'native areas' (Gelb, 2003; Lewis, 2001). From the 1960s onwards, the government forcibly removed about half a million black people from areas designated for white people (Gelb, 2003). In urban areas, the Group Areas Act (1950) restricted property ownership rights for blacks to specified areas (Steyn, 2004; Gelb, 2003).

The effect of the Group Areas Act (1950) coupled with the migrant labour system restricting the movement of black people into urban areas contributed to severe housing shortages and prevented home ownership, which in turn prevented access to loans due to lack of collateral (Gelb, 2003; Qunta, 1995). Together, these factors explain why land and property ownership patterns are highly skewed against blacks (Lewis, 2001). In the early 1990s, 67 000 White farmers owned 85.5 million hectares amounting to 86% of agricultural land, accommodating 5.3 million people or 16.2 hectares per rural resident (Gelb, 2003). By comparison, 13.1 million Africans lived on black reserved land measuring 17.1 million hectares, translating to less than 1 hectare per person.

In urban areas, the ability of blacks to move around and sell their labour competitively as well as acquire skills was restricted through influx control and 'pass' laws which tied urban residential rights to employment (Nduru, 2004; Gelb, 2003). There were also laws that prohibited blacks from owning shares in public corporations (Hirsch, 2005). Moreover, black entrepreneurial development was severely suppressed in order to protect and promote the interests of the white minority group (Southall, 2004). In 1962, opportunities for small businesses were opened up in urban areas to Coloureds and Indians on condition that they did not compete with whites, resulting in widening economic inequalities among the various black population groups (Iheduru, 2004).

The prohibition of Africans from doing business in areas reserved only for white people meant that effectively Africans could not develop as mainstream entrepreneurs. This is reflected by the current low incidence of entrepreneurs among Africans which stood at only about 1.4% compared to 3.5% for Indians and 7.5% for Whites in 2001 (BEECOM,

2001). Moreover, during the period 1994 to 1996, the market share of public sector contracts for small businesses that were owned, managed and controlled by black persons was approximately only 2.5% of the total budget of the Department of Public Works (Govender and Watermeyer, 2000).

Labour Related Laws

White people were also protected from competition in their jobs (Gelb, 2003). The forced labour regime in the mines established the migrant system and provided the foundation for racial discrimination in the labour market and workplace (Qunta, 1995). According to Gelb (2003), white men particularly continued to benefit from race-based preferential recruitment policies introduced in the 1920s for low skilled jobs in the public sector. Later, the lowly skilled white workers were after 1945, incorporated into the mainstream economy and moved into skilled and supervisory positions with steadily raising real wages (Gelb, 2003). Raising the living standards of whites reflected a widening gap with other race groups. This gap was exacerbated by increasing capital-intensity which meant that black workers could not be absorbed into urban employment in sufficient numbers resulting in increasing black unemployment from the 1960s (Gelb, 2003; Qunta, 1995). By 1994, the unemployment rate for Africans was 41% compared to 6.4% for Whites, 23% for Coloureds and 17% for Indians/Asians (World Bank, 1995). In 1996, Whites held 80% of professional positions and 93% of managerial positions in the country although they only constituted about 10% of the total population (Engdahl and Hauki, 2001). In a 1998 survey, involving 455 South African firms, White males constituted 89% of senior management, Black males constituted 6% and the remaining 5% were either Coloured or Indian (Msimang, 2001).

Education Related Laws

The government provided unequal education to the various groups of the population. Through the Bantu Education Act No. 47 of 1953, 'Bantu' education was introduced to provide for an inferior education for Africans (Butler, 2006c; Gelb, 2003; Engdahl and Hauki, 2001). This educational system "focussed on limited technical and vocational skills and instruction in the vernacular" (Gelb, 2003:21) thereby deliberately under-developing the capacity of the majority of South Africans.

In 1989, the teacher to pupil ratio of Africans compared with that of Whites was 38:1 to 17:1 respectively and government spent 4 times as much financial resources on a White pupil than an African (Gelb, 2003; Qunta, 1995). About 52% of teachers in Black schools were inadequately trained (Gelb, 2003). As a result, the educational outcomes for Africans

remained poor with matriculation (school leaving) pass rates for Africans being 41% compared with 96% for Whites (Hofmeyr and McLennan, 1992).

Moreover, those Africans who passed were limited in their choice of Universities as they were barred from 'White' Universities except with special permission from the Minister of Education (Qunta, 1995). Besides, the Universities 'reserved' for blacks rarely offered technical courses (Qunta, 1995). The removal of mathematics and science from the Bantu educational system has had detrimental effects on Africans. Until recently, only one out of every 10, 000 black school entrants would complete 12 years of education and obtain high enough grades in mathematics and science to be eligible to study technical careers such as engineering or medicine (McCutcheon, 2000). The educational system was geared towards preparing blacks primarily for engagement in low-paying unprofessional jobs (Butler, 2006c; Engdahl and Hauki, 2001).

Consequently, the majority of blacks were disadvantaged and generally regarded as a commoditised source of cheap labour for the privileged minority group (Iheduru, 2004). In the case of the construction industry, the Bantu Building Workers Act No. 27 of 1951 did allow for the training of blacks as artisans in the building industry but, they could subsequently only be employed in skilled work in black designated areas (Butler, 2006c). Clearly, past educational policies have contributed to the current massive skills shortage experienced by RSA (RSA, 2007a; DTI, 2003; Qunta, 1995).

1.1.3 Metaphor of the Two Economies: A Consequence

In addition to a wide range of discriminatory laws, the pre-1994 government directed very little investment towards the infrastructural and basic social needs of the majority black population (National Treasury, 2003). Up until 1994, Whites were the primary beneficiaries of public expenditure, receiving over 50% of all social spending such as health, education, welfare including housing, water, sanitation, power, transport, and communication, resulting in gross inequalities (Hirsch, 2005; CIDB, 2004). For example, by 1990, 74% of the Blacks in urban areas had no tap water (Hirsch, 2005).

The discriminatory laws severely distorted income distribution patterns and levels of effective demand of goods and services in the economy (Hirsch, 2005). In 1993, the poorest 10% of the population received only 1.1% of the population's total income whereas the richest 10% received 45% (World Bank, 2000). Using a household poverty line of US \$230 per month in 1999, it was found that 95% of poor people in RSA were Africans (Bhorat *et al.*, 2000).

The legacy of *apartheid* which was intertwined with racial capitalism left the country's economy with distorted growth patterns, inefficiencies and under-developed resources

and markets (Watermeyer *et al.*, 1998; Gounden, 1997; ANC, 1994). Current major manifestations of the socio-economic inequalities include; a racially skewed income distribution, a general lack of urban services in many areas and a high level of unemployment (active job seekers) of about 26% (StatsSA, 2006). Owing to this, the country's economy is described metaphorically as comprising two economies: one modern, developed and sophisticated and the other poor, informal and underdeveloped (DTI, 2003; Mbeki, 2003; 2001; Lewis, 2001). The existing developed economy i.e. the first economy is controlled by a minority group whereas the underdeveloped economy i.e. the second economy is characterised by small, medium and micro enterprises (SMMEs) owned by previously disadvantaged groups (DTI, 2006a, b).

The marginalisation of black people was huge and requires extensive corrective measures. Against this background, the RSA government since 1994 has been faced with a unique and challenging task of merging the two parts of the dual economy (DTI, 2003). The government hopes to achieve this through intervention in both the first and second economies (DTI, 2006a). The aim is to create a sustainable unified growth pattern in order to provide an all-inclusive environment conducive for optimal economic development (World Bank, 2003). The government's intention is to leverage interventions in the first economy to benefit the second economy so it can become integrated within the first economy and contribute to economic growth (DTI, 2006a; Mbeki, 2003). To achieve this, government has been actively involved in the socio-economic transformation of the country. This is in recognition of the fact that while political power has shifted dramatically away from the minority White population to the majority Black population, wealth has been slower to follow. Economic control and asset ownership largely remains in white hands.

1.1.4 Social and Economic Transformation Imperative

Because the RSA government was, and still is faced with the dual challenge of redistributing resources and growing the economy to sustain the redistribution, it has adopted a hybridised interventionist approach. Hirsch (2005) describes this hybrid approach as comprising elements of both socialist and economic-growth approaches within a conservative macro-economic framework. The socialist approach is reflected by the government's compilation of the Reconstruction and Development Programme (RDP) document in 1994 intended as the blueprint for socio-economic transformation (ANC, 1994; RSA, 1994). The RDP contains several proposals and strategies which can be grouped under four major themes namely; meeting basic needs, developing human resources, democratising the state and society and implementing the RDP (RSA, 1994). These core themes are underpinned by elements of redistribution but, also the aim of growing the economy through the mobilisation of existing, underutilised resources.

As for the macro-economic framework, government introduced the Growth, Employment and Redistribution (GEAR) strategy in 1996 for rebuilding and restructuring the economy, (RSA, 1996a). GEAR adopted an export-led approach whose main focus was on raising industrial profitability to boost growth and export promotion (Gelb, 2003; Lewis, 2001). In terms of social and sectoral policy development, GEAR did not depart completely from RDP as it built on the goals of RDP. It did outline some linkages between growth, redistribution and new policy directions although these were few in comparison to the ones made in the RDP (RSA, 1996a). Within the GEAR framework, redistribution was regarded as a separate process to be financed by benefits of growth (Gelb, 2003; Lewis, 2001).

On face value, RDP and GEAR seem to contradict each other in their approaches and focus. However, in practice, the principles of the RDP and GEAR have continued to be applied concurrently as reflected in the subsequent policies that government has adopted. The RDP document identified BEE as one of its central objectives (ANC, 1994; RSA, 1994). BEE is a process aimed at bringing previously marginalised individuals into the mainstream economy with the intention of contributing to economic growth and equitable redistribution of resources (DTI, 2003). Hence, the justification for the BEE policy has both moral and economic dimensions (RSA, 2007a; DTI, 2003). On moral grounds, BEE aims to redress injustices of the past, such as those discussed in sections 1.1.2 and 1.1.3. The government took the view that merely abolishing the discriminatory laws or legal barriers to economic participation would not be enough to level the playing field in a timely manner. This is particularly because Whites still had overwhelming advantages such as access to capital, established business networks and higher levels of education and training. Thus, pro-active interventions were seen as necessary. The economic logic behind BEE is that incorporating the broader participation of black South Africans in the economy would aid growth and contribute to stability (Strydom, 2005; Steyn, 2004) by releasing the economic potential of the black population (Marr, 2007; Alexander, 2007; Strydom, 2005; van der Nest, 2004).

Since the 1990s, the concept of BEE has continued to undergo changes, latterly to include the current concept of Broad-based black economic empowerment (B-BBEE), as both practice and theory evolves (RSA, 2007a; Butler, 2006c). The concept of BEE is controversial and reflects the dualistic nature of the government's approach to addressing socio-economic imbalances of the country as shown throughout this thesis. The underlying premise of BEE initiatives is that they will also affect other power relations within society (Thompson, 2004; King, 1998). Thus, as BEE evolves, the RSA experiences will contribute to the debates on the role of the government, particularly in

promoting particular groups in society and the relationship between the government and business (Thompson, 2004).

1.2 RESEARCH FOCUS

Having provided the background, this section outlines the primary focus of the research.

1.2.1 BEE Legislative Framework and Public Procurement

Until the release of the Strategy on BEE in 2003 by government following the recommendations of the BEE Commission Report (2001), there was no coherent strategy of implementing BEE. Among other things, the Strategy (2003) laid a basis for the B-BBEE Act 2003 discussed further in chapter two. Thompson (2004) notes that there are currently about 30 different legislations or regulatory provisions dealing with the issue of economic empowerment to varying degrees. However, it is the B-BBEE Act (2003) that now provides the primary statutory framework for promotion of BEE in RSA.

Reflecting its wider scope, B-BBEE is defined as the economic empowerment of all Black people including women, workers, youth, people with disabilities and those living in rural areas, through diverse but integrated socio-economic strategies (DTI, 2003). More specifically, government conceives B-BBEE as having three interlinked core elements where change can occur, namely: direct empowerment, human resource development and indirect empowerment of previously disadvantaged people (RSA, 2007a; DTI, 2003). These three elements are broken down into seven measurement criteria: ownership; management; skills development; employment equity; preferential procurement; enterprise development and residual factor as the basis for driving B-BBEE in RSA (RSA, 2003). The definition for each criterion is provided in Appendix 1. The theoretical basis of this BEE conceptual framework is that any company wishing to do business with government ought to have business principles that are compatible with the seven measurement criteria (Engdahl and Hauki, 2001).

Arguably, one of the significant ways through which government is seeking to empower black people or historically disadvantaged groups is through the provision of opportunities emanating from public procurement (Thompson, 2004). It is in the seven areas listed earlier that government sees an opportunity to leverage its purchasing capability to influence change in firm behaviours. Government procurement can thus be seen as a significant mechanism for encouraging socio-economic transformation within enterprises by controlling access to segments of markets. Consequently, public procurement is inextricably linked with BEE (Rogerson, 2004; Manchidi and Hammond, 2002) and is enshrined in the RSA constitution (RSA, 1996b).

The Constitution requires the public procurement system to meet aims of equity and efficiency, making RSA one of the few countries in the world where procurement is a constitutional subject (McCrudden and Gross, 2006; Gounden 2000). A discussion of ongoing public procurement reform measures initiated in 1994/5 is presented in chapter two.

1.2.2 Construction Industry as the Context of the Study

Following the government's commitment to socio-economic transformation in order to promote sustainable employment and equal access to opportunity for all expressed in strategies such as the RDP and GEAR, the RSA construction industry clearly has a key role to play (Ofori *et al.*, 1996). The main reasons for studying preferential procurement in the construction industry are discussed below.

The Role of the Construction Industry in the National Economy

Typically, the construction industry plays a significant role in any economy. It has the responsibility of creating, defining and maintaining the built environment within which most other social and economic activities take place (CIDB 2004; Cain, 2003; Morton, 2002; Ganesan, 2000; DETR 2000; Ball, 1988; Ofori, 1988). It also improves infrastructure, which enhances mobility, distribution, growth and expansion of production in businesses (CIDB 2004; Medhji, 2004; UNCHS, 1996; Ball, 1988).

The construction industry therefore contributes significantly to socio-economic development through the creation of infrastructure, provision of employment opportunities, contribution to GDP and gross fixed capital formation (GFCF) (CIDB 2004; CSIR, 2003; Ofori, 2001; 1988; UNCHS, 1996). In addition, the industry is able to provide government with delivery mechanisms for many aspects of government policy because public sector spending constitutes a significant portion of its demand (CIDB, 2004; CSIR, 2003; Hillebrandt, 2000; DETR, 2000; Ball, 1988; World Bank 1984).

Role of the RSA Construction Industry in Socio-economic Transformation

During the pre-1994 era, public procurement systems were geared towards protecting the interests of the minority, large, white-owned construction firms whilst restricting the access to opportunities of small firms owned predominantly by majority blacks (Govender and Watermeyer, 2001). Following the democratic dispensation in 1994, there has been considerable change in the public sector procurement system. To this effect, a public sector procurement forum spear-headed by a government appointed procurement task team was set up in 1995 to initiate the public sector procurement reform. The task team

consisted of various stakeholders drawn from both the private and public sectors with the leaders coming from the built environment professions (Gounden, 2000).

The procurement task team identified that the construction industry could benefit from public procurement interventions whilst simultaneously enabling government to realise some of its broader socio-economic objectives (Gounden, 1997). As a result, targeted procurement was subsequently developed in 1996 under affirmative procurement and its implementation in the construction industry commenced the same year (Gounden, 2000; Soderlund and Schutte, 1998). Targeted procurement enabled preferential procurement to be implemented by linking social objectives to procurement in a fair, transparent, equitable, competitive and cost effective manner (Watermeyer, 2000). It essentially provided for the 'unbundling' or 'breaking-out' of large contracts into smaller packages to make them accessible to targeted groups, who may not have otherwise have the necessary resources, capacity or expertise to perform large contracts (Watermeyer, 1998).

With targeted procurement, direct preferences are accorded to targeted enterprises to tip the scale in their favour particularly on small contracts with a value below a predetermined financial threshold (Watermeyer, 1998). Targeted procurement is therefore used to create demand for employment by encouraging the adoption of labour intensive work methods and technologies that increase employment opportunities (Watermeyer 2000) by removing the advantage of enterprises that have ready access to capital. It aims at providing employment and accelerating access to business opportunities by marginalised / disadvantaged individuals referred to as 'target groups'. By doing so, small businesses are encouraged into the mainstream economy and thus can contribute to formal output. The promotion of small businesses is particularly important for RSA mainly because they have scope to broaden the economic activity base and address the skewed racial and gender ownership patterns (Govender and Watermeyer, 2000).

The RSA government's recognition of the strategic role that the construction industry could play in the reconstruction and development of the country is reflected in the White Paper on *Creating an Enabling Environment for Reconstruction and Development in the Construction Industry* published in 1999. The governments' policy towards the industry was expressed in the White Paper, as "*a construction industry policy and strategy that promotes stability, fosters economic growth and international competitiveness, creates sustainable employment, and addresses historic imbalances as it generates new industry capacity for industry development*" (RSA, 1999:10).

1.2.3 Characteristics that make the Industry amenable to Preferential Procurement Policies

The construction industry is particularly attractive as a vehicle for promoting government preferential procurement policies and a good area to study the use of procurement as an instrument of social policy. Some of the main reasons for this stance are discussed below:

Government's dual role as a major client of the industry and regulator

Governments are generally large purchasers of construction services which provide them with significant opportunities to influence the industry (Gounden, 2000). The RSA construction industry currently generates an output of about R100 billion a year, which contributes about 11% to GDP (StatsSA, 2007). As the dominant buyer of services provided by the country's construction industry, the government's orders represent over 50% of its demand. The role of the construction industry in furthering government socio-economic objectives is strengthened by the prioritisation given to the current massive investment plan in physical and social infrastructure. This investment plan has been developed by government in partnership with public enterprises for the period 2005 – 2009 (DTI, 2006a).

This investment expenditure, which is driven by the Accelerated and Shared Growth Initiative of South Africa (ASGISA), is estimated at about R415 billion (DTI, 2006a; Cheetham and Mabuntana, 2006). Of this, 40% is to be spent by public / state owned enterprises and the balance to be shared among the three tiers of government, i.e. national, provincial and local government (DTI, 2006a). Government's intention is to leverage this increased public sector investment expenditure to promote small businesses and address B-BBEE issues such as access to finance and preferential procurement (DTI, 2006b).

The government's infrastructure investment plan is intended to raise the GFCF to 25% of GDP and through this, increase economic annual growth from 4.5% between 2006 and 2009 and to 6% between 2010 and 2014 (National Treasury, 2006; le Roux, 2005). The implication of this expansionary agenda for the construction industry is the requirement to double its output by 2010 to be in line with the growth initiative (Creamer, 2006; 2005; Mowson, 2005; RICS, 2005). This suggests that the construction industry would have to grow by at least 10% per annum between 2006 and 2010 (le Roux 2005). This is a major challenge for an industry which currently has a huge shortage of managerial, technical and crafts skills (CIDB, 2004). The development of skilled manpower at all levels to match the growth of investment in the industry is essential (Creamer, 2006; CIDB, 2006; Loxton, 2005; World Bank, 2005).

Nonetheless, as the major client of the construction industry, the government is in the unique position to exert its significant market power, making the industry well suited to preferential procurement policy interventions. Moreover, the strategic role of the government as regulator enables it to promote new techniques of procurement (Morton, 2002) or set standards and regulate the business environment within which the construction industry operates. However, any change in the legislative framework 'disturbs' the market, as may be the intention, and generates resistance to the new order (Radebe, 2006).

Labour Intensive Nature with Low Barriers to Entry

The labour intensive nature of the construction industry (CSIR, 2003; Ofori, 1990; Hillebrandt, 2000) and its low barriers to entry compared to other industries (Sweet, 2006; Morton, 2002) allow it to form a vital link between formal and informal economies. For a country like RSA where a large percentage of the population are semi-skilled or unskilled, the construction industry provides a route to acquiring skills and expertise through work experience (McCutcheon, 2001). According to a CSIR (2003) report, the construction industry is one the industries (others include agriculture, mining and manufacturing) employing the highest number of persons with either minimum formal education and/or informally acquired skills. Moreover, the economic linkages with other sectors means that for every one job created in the construction industry, one or two more jobs are created either in the industry or elsewhere (Ganesan, 2000). Thus the industry's potential for creating employment and training opportunities make it amenable to government's preferential procurement policies.

Structure of the Construction Industry

The construction industry is highly fragmented and characterised by a pyramid structure consisting of numerous small firms at the bottom and a few large firms at the top (Morton, 2002; Merrifield, 1999; Ofori, 1991). Small firms undertake the many small, labour-intensive, relatively simple, dispersed projects, which are necessary for economic development and social up-liftment within communities (UNCHS, 1996). Likewise, the RSA government's belief that small businesses are a key vehicle to achieving economic and social objectives means that their active promotion and participation in the construction industry is in the interest of industry development (CSIR, 2003). This is because SMME's are powerful generators of income and employment opportunities and use less capital investment per unit of output than larger enterprises (Gounden, 1997). They are also the vehicle by which most poor people typically gain access to economic opportunities (Lloyd, 2002; Chinnock and Collinson, 1999; Watermeyer, 1998).

Since preferential procurement, as implemented through targeted procurement in the construction industry, often involves unbundling contracts into smaller more accessible packages to targeted groups (Watermeyer, 1998), the prevalence of small firms in the industry suits the government's policy of promoting small businesses.

Flexibility of the Construction Industry

The construction industry has a high degree of flexibility to respond to the highly variable demand for its services (Morton, 2002). Its ability to adjust to “*different framework conditions... makes this sector a major contributor to the process of development*” (Lopes 1998:648). Because of this flexibility, reductions and increases in government spending are often enabled through construction projects (Morton, 2002). This also makes the industry amenable to government intervention through preferential procurement.

1.3 PROBLEM FORMULATION

As has been established, while government has the responsibility of regulating market participants, it is also an active large participant in the construction market. It is through this dual role that government attempts to influence the construction industry to exhibit behaviours that meet its macro economic and social objectives. The ways in which this dual role of the government plays out is the primary exploration of this thesis.

Since the introduction of targeted procurement in 1996, procurement practices in the RSA construction industry have been undergoing change. These changes are a response to the government's desire to promote BEE with a view to transforming the racial ownership and participation profile (CIDB 2004; CSIR, 2003). Targeted procurement signifies the potential of the public sector to transform industry practice to impact on the socio-economic environment, and the power of procurement as an instrument of policy and change (CIDB, DPW, & CETA, 2005; CIDB 2004; RSA, 1997).

Preliminary literature review indicated that there are some (case by case) studies reported on various aspects of targeted/preferential procurement in the construction industry (e.g. Muller, 2006; Rogerson, 2004; Shakantu *et al.*, 2002; Gounden, 2000; Watermeyer, 2000; 1998; Soderlund and Schutte, 1998). Beyond these individual project based studies, empirical evidence on how preferential procurement policies are being implemented and how they affect the industry is relatively limited (Gounden, 2000). Anecdotally, there is localised information. In the Limpopo Province, for example, it has been reported that about 80% of all public works construction is undertaken by black and women-owned enterprises (CIDB, 2004). Such information is nevertheless often taken for granted without questioning or understanding why for instance, none of these women or black-owned firms have emerged as significant players in the industry (Mjoli-Ncube, 2006).

Therefore, while the construction industry appears to be responding to the changing societal needs by embracing preferential procurement policies, the way in which these policies affect construction firms in practice is not well understood. In investigating the impact of government's preferential procurement policies, this research hinges on the premise that any *kind of state intervention has distributive consequences whose effects are never neutral* (ERF, 2004; Przeworski, 1998). Different groups are affected differently, – for example, financial support given to one set of contractors rather than another will create winners and losers. The law of 'unintended consequences' arises in that government intervention does not always work in the way it was intended or the way in which economic theory predicts it should (ERF, 2004). Designing the right incentive mechanisms to influence behaviour is often problematic. Generally, firms, industries, employees, consumers or groups of individuals have incentives to seek regulation that benefit them and resist regulation that dis-benefit them (Przeworski, 1998).

1.3.1 Statement of the Problem

Central to BEE, is the use of government procurement as a lever to deliver social and economic objectives and restructure a rapidly developing economy in the context of democratisation at both the macro and micro levels. Through preferential procurement policies, the RSA government has been using its large procurement capacity as leverage to give preference in the award of contracts to firms that are supportive of its BEE/socio-economic objectives. To this end, government sees preferential procurement as a vehicle through which some of its socio-economic objectives such as job creation could be realised whilst contributing to construction industry development. Therefore, as a significant sub-sector of the economy, the construction industry has a key role to play in the BEE process through public procurement. For construction firms, participation in preferential procurement is increasingly being associated with strategic decisions including whether or not to support government's socio-economic development objectives.

However, from the preliminary study of literature, it is not clear what the understanding of the impact of preferential procurement policies on both established and emerging firms is and indeed how firms respond in terms of their actions and practices. It is also implied that the firms' collective responses and actions tend to shape the way industry develops and this has implications for the realization of government's socio-economic objectives. Therefore, the research problem addressed in this thesis states that:

Currently, there is a lack of an established understanding of how different groups in the RSA construction industry respond to preferential procurement in terms of their actions and collectively what the implications of their responses are.

This thesis argues that the impact of government preferential procurement policies on construction firms varies and so do the strategies employed by the firms in response. Incentives and disincentives provided by institutional frameworks, the firm's resource and organisational capacity and historical background influence the type of strategies adopted by firms. It is also argued that preferential procurement policies have distributive consequences whereby they yield both intended and unintended (and positive and negative) consequences.

1.4 RESEARCH AIMS AND OBJECTIVES

The aim of this research is to establish a detailed base level understanding of how the construction industry responds to preferential procurement policies and what the consequences of the firms' collective responses are. It also seeks to examine how the outcomes reflect government's objectives of achieving wider socio-economic objectives through preferential procurement. The goal of the research is to "create new theoretically expressed understandings" (Strauss and Corbin, 1998:8) with a view to contributing to theory development rather than theory testing.

To achieve the stated aims, the objectives of the research are, to;

- i. Find out how construction firms perceive government's preferential procurement policies in the industry.*
- ii. Identify factors that constrain the implementation of preferential procurement policies in the industry from the perspective of firms.*
- iii. Establish the strategies that construction firms have adopted in response to preferential procurement policies.*
- iv. Establish the consequences of the collective responses and interactions of construction firms.*

1.5 RESEARCH QUESTIONS

To give direction to, and reflect the argument of the research, the main research question can be framed as;

How is government preferential procurement policy affecting construction firm behaviours in the industry?

To answer the main question, the following five sub-questions are presented;

- i. How do construction firms understand government's evolving preferential procurement policies?*

- ii. *What factors can be identified as constraining the implementation of preferential procurement policies in the industry?*
- ii. *How do construction firms respond to preferential procurement policies?*
- iv. *What are the outcomes of the collective responses of construction firms to preferential procurement policies?*

1.6 JUSTIFICATION FOR THE RESEARCH

1.6.1 Significance of the Research Area

Both public procurement and the construction industry have significant roles to play in the country's socio-economic transformation agenda. Previous research shows that preferential procurement policy is being used in RSA to affirm the government's socio-economic objectives and principles of the RDP (Gounden, 2000). In addition, preferential procurement is also being used as an intervening policy aimed at addressing some of the structural problems inherent within the construction industry (Gounden, 2000). It is primarily aimed at addressing the skewed nature of the ownership patterns in the construction industry. Therefore, as an important sub-sector of the economy, the development of the construction industry ought to therefore reflect the development and transformation of the wider society (CIDB 2004).

The importance of the construction industry as an 'agent' for development lies in the fact that it provides significant amounts of fixed investment, contributes considerably to the national output and is a major source of employment, directly and indirectly by its multiplier effect (Medhji 2004; CIDB 2004; Ganesan, 2000; Ofori, 1998; Cooke 1996; World Bank, 1984; Briscoe, 1989). In RSA, the construction industry employs over 1 million people comprised of 864,000 in the formal sector (StatsSA, 2006). It contributed 11.11% to SA's GDP and 20.25% to GFCF in the 2nd quarter of 2007 (StatsSA, 2007). It is being used as a catalyst for economic growth through government's major investment in infrastructure in partnership with private sector enterprises through ASGISA. Government intention is to continue leveraging this buying power through preferential procurement in support of its BEE objectives. Thus preferential procurement is an important area to study in this context.

1.6.2 Relative Neglect of the Particular Research Problem

Notwithstanding that preferential procurement has an important role to play as a means to achieving social and economic objectives both at industry and national level, there is limited research in this area. The need to conduct more empirical research to gain deeper insights is apparent as has been alluded to by previous authors in both the local and

international literature. One key author commented that, “while the use of public sector procurement as an instrument of social policy is wide spread, detailed information about how it operates in practice is hardly available (McCrudden, 2004:257). Two other key authors and members of the RSA 1995 public sector procurement task team that developed targeted procurement expressed similar concerns (Watermeyer 2000; Gounden, 2000). In particular, Watermeyer (2000) argued that there was limited research and data on most programmes to be able to demonstrate the effectiveness of the use of procurement as an instrument of social policy.

In the RSA construction industry, preferential procurement policies were first piloted on the Malmesbury Prison Complex project in the Western Cape Province in 1996 (Soderlund and Schutte, 1998). However, no detailed report on the affirmative procurement component of this project appears to have been made available (Gounden 2000). Watermeyer *et al.* (1998) provide the first report on the affirmative policy outcomes in the RSA construction industry but the report is only limited to the period August 1996 to October 1997 and focussed on the framework for policy implementation. Later, Gounden (2000) conducted an extensive research on the impact of affirmative procurement policy on the participation and growth of preferential (affirmable) business enterprises. However, the research only considered projects that were undertaken during the period August 1996 to July 1998 and at which time the PPPF Act 2000 or the BBBEE Act 2003 were not yet promulgated. In addition, the research focussed only on ‘affirmable’ business enterprises (ABEs) and was limited to the analysis of the data set provided by the Department of Public works.

1.6.3 Policy and Practical Relevance of the Research Findings

The construction industry is uniquely placed to benefit from this research because it sheds light on some areas that stakeholders could improve on in terms of the effectiveness and revision of policy and implementation thereof. The research also has potential to help identify areas within the institutional framework that need better intervention in order to make meaningful contribution to industry and socio-economic development.

The current research is pertinent to the construction industry at a time when BEE codes are being gazetted, procurement legislation amended and procurement (both public and private) is beginning to assume increasingly strategic roles in delivering company and government goals, including contributions to socio-economic development. Thus the industry stands to benefit from any additional work in this research area that could potentially help to identify best practice and/or modify existing practices. There is currently pressure from various stakeholders for the adoption and implementation of policies that

can deliver better products for clients and services to the industry. There is pressure to spend government resources better and for government to provide opportunities and livelihoods for the majority.

Moreover, the work is relevant and beneficial to intervention efforts of various stakeholders such as the DPW, CIDB, CSIR, City of Cape Town Municipality, Western Cape Provincial Government and private firms. By understanding better the responses of firms and their implications, the findings could inform the tools designed to optimise management efficiency and subsequently generate more positive outcomes. This is crucial, particularly as the industry strives to “foster growth and international competitiveness, create sustainable employment, address historical imbalances and generate new industry capacity” (RSA, 1999:10). Whilst this research will not provide an answer to all these challenges, it can in its limited context, provide a firmer foundation for understanding responses of key industry stakeholders to preferential procurement.

1.6.4 Relative Neglect of Grounded Theory Methodology

There has been a relative neglect of grounded theory approach by previous authors who have mainly adopted case studies or surveys (e.g. Rogerson, 2004; Gounden, 2000). As justified in Chapter 4, in order to gain deeper insights and understandings of how government preferential procurement policies influence the behaviour of construction firms, research utilising methodologies which take into account practices embedded in data are essential. This research adopts one such methodology, namely grounded theory.

1.7 RESEARCH METHODOLOGY OUTLINE

This research is largely exploratory and primarily qualitative in nature. The research methodology involves a critical review of literature in order to identify research issues and draw linkages between the problem and the wider body of knowledge. The research is inclined towards the phenomenological paradigm and adopts a moderate constructionist view which sees knowledge as being largely socially constructed (Mir and Watson, 2000; Crotty, 1998).

Grounded theory, which is both a research methodology and a method of analysing data, was adopted for this research. It is a methodological approach which is most suited for research where there are no sufficient established theories in the field of study to provide appropriate theoretical frameworks (Straus and Corbin, 1998; Remenyi *et al.*, 1998). The research uses semi-structured interviews for collecting data supplemented with documentary evidence. The research process draws upon both inductive and deductive approaches in a cyclical manner whereby data, theory generation and analysis take place in a dialectical process (Strauss and Corbin, 1998; Mason, 1996). The grounded theory

approach adopted in this study follows closely the approach advocated by Strauss and Corbin (1990; 1998) of open, axial and selective coding. The research methodology is discussed in more detail and justified in chapter 4.

1.8 SCOPE AND KEY ASSUMPTIONS

- i Preferential procurement policies on paper are different from the policies implemented on the ground.*
- ii Contractors have different motivations hence respond differently to preferential procurement policies.*
- iii Firms' strategies change or are adapted to suit the evolving BEE legislation.*
- iv The consequences of preferential procurement policies are not neutral.*
- v Preferential procurement policies introduce changes which disrupt the industry's status quo.*

The above assumptions reflect the researcher's initial 'rough theory' of the impact of preferential procurement policies on the construction industry. As no *a priori* hypothesis is required for this kind of study (Strauss and Glaser, 1998), these assumptions serve to indicate the direction of the research and argument.

1.9 THESIS STRUCTURE

The thesis comprises 8 chapters whose outline is described below as follows:

Chapter 1 introduces the core research problem, aims and objectives, states the thesis/argument of the research as well as the rationale for undertaking the research. The chapter makes a case for preferential procurement policies in RSA and for the construction industry as a context for the study. It gives the scope of the research and basically forms a basis for the research described in rest of the chapters.

Chapter 2 presents a review of literature relating to the theoretical conceptualisation of preferential procurement within affirmative action and black economic empowerment. The chapter argues that despite preferential procurement having many benefits and the construction industry being particularly suited as a vehicle for pursuing government socio-economic policies, preferential procurement remains a contested concept. It concludes that there is no identifiable coherent generic theoretical framework that can be applied in the conduct of this research. The findings of this chapter have theoretical and methodological implications for the research discussed in chapters 3 and 4 respectively.

Chapter 3 is a further review of literature drawn mostly from fields outside the 'traditional' construction management field. Much of the literature reviewed is from institutional

incentives, conflict theory and strategy research respectively. In this chapter, a triadic analytical framework is developed for purposes of exploring the research problem both conceptually and empirically. The chapter concludes that the adoption of a multi-perspective analytical framework provides a deeper and greater understanding of the research problem under investigation. The creativity demonstrated in this chapter reflects one aspect of the originality of this research.

Chapter 4 describes in detail and justifies the research methodology adopted for the research together with its philosophical underpinnings. A largely qualitative research utilising grounded theory approach within a phenomenological paradigm is discussed. The research methods and techniques employed such as theoretical sampling, the use of semi-structured interviews and triangulation of data are justified.

Chapter 5 reports the results obtained from applying the methodology described in previous chapter within the analytical framework developed in chapter three. The chapter presents the contextual field data and discusses the findings relating to objectives 1 and 2. Both chapters 5 and 6 incorporate selected direct quotes from the interview transcripts to illustrate key points or build the explanations. Chapter 5 forms the basis for discussion and interpretation of the results in chapter 6.

Chapter 6 presents an analysis and interpretation of the empirical findings relating to objectives 3 and 4 within the analytical framework used previous chapter 5. Chapter 6 also presents the theoretical conjectures that emerge from the conceptualising of the data and advances some propositions. The chapter provides the main thrust of the research findings. It highlights the strategic responses of construction firms to preferential procurement policies and their consequences. It paves way for the drawing of conclusions and recommendations in the following chapter.

Chapter 7 revisits the research context and problem including the key conceptual, theoretical and methodological issues uncovered in literature. The chapter summarises the key empirical findings and demonstrates the extent to which the research aims and objectives have been met. Conclusions about the research problem are drawn and the 'contribution to knowledge' highlighted. Having gone through the research process, specific consideration is given to the research limitations. Finally, relevant recommendations are made and areas for further research suggested.

1.10 CONCLUDING REMARKS

This chapter lays the basis for the thesis providing the background to the research including the identification of the research problem and stating of the aims and objectives of the research. The justification for the research was made, the methodology was

outlined, the scope and limitations were made explicit and the thesis structure was presented. Based on this foundation, the next chapter provides a detailed description of the research through a review of relevant literature.

CHAPTER 2: THE POTENTIAL FOR PUBLIC PROCUREMENT- A REVIEW

2.0 INTRODUCTION

Having identified the research problem in the previous chapter, this chapter aims to build a theoretical foundation upon which to base the research. However, it does not claim to be exhaustive in its citations. The objective of this chapter is to establish how government attempts to harness the potential of public procurement as a medium for delivering socio-economic objectives in the construction industry within the context of BEE. A secondary objective is to establish whether a coherent generic theoretical framework that guides preferential procurement policies in practice can be identified and applied to the current study.

The chapter is structured in four sections. The first section discusses the concept of preferential procurement within the broader context of public procurement. It also considers examples of the use of procurement to promote equality on the basis of ethnicity, race and gender drawn from the experiences of the USA and Malaysia. The second section focuses on the RSA case of using public procurement to achieve specific socio-economic objectives within the BEE framework. The third section looks at how preferential procurement is implemented in the construction industry to achieve socio-economic objectives. The last section draws conclusions on theories for understanding preferential procurement as part of redistributive policies in the construction industry.

2.1 CONCEPTUALISING PUBLIC PROCUREMENT

2.1.1 Public Procurement as a Significant Government Function

Literature indicates that government is involved in four main economic activities: providing legal/institutional framework for all economic activities; redistributing income through taxation and spending; providing public goods and services and purchasing goods, services and public works from the private sector (Thai, 2001). Therefore, procurement is one of the major activities of government (Rogerson, 2004). Procurement refers to the “process that creates, manages and fulfils contracts relating to the provision of supplies, services or engineering and construction works” (Watermeyer, 2003b:11). It may also include the disposal of property, hiring of anything and acquisition of any rights and concessions (Watermeyer, 2003b).

There are two main reasons that make public procurement a significant function of government. The first is that the large size of procurement expenditure has a great impact on the economy (Fee *et al.*, 2002; Thai, 2001; Watermeyer, *et al.*, 1998). Statistics show that on average, public procurement contributes about 10% –15% to the GDP in most

European countries and 20% in Latin America (Morand, 2003); about 12%-25% in Western Europe (International Council for Local Environmental Initiatives, 2002) and about 10% in the USA (Marion, 2005; Bajari and Tadelis, 2001). The second reason is that the use of procurement as an important instrument for achieving economic, social and other objectives (McCrudden, 2004; Arrowsmith, 1995) provides government with opportunities for implementing selected national policies (Thai, 2001).

Notwithstanding, Thai, (2001) asserts that until recently, public procurement has been a neglected area of academic research, with much of the published material being governmental reports. This claim supports the argument made in chapter one that there is limited literature available to show how procurement as an instrument of social policy works despite its widespread use (McCrudden, 2004; Gounden, 2000; Watermeyer 1998).

2.1.2 Goals of Public Procurement

A good procurement system should have stated goals and policies. It is common to find different countries and even governmental entities within the same country having different procurement goals or policies due to different social, economic, and political factors (Thai, 2001). For example, a country with underprivileged ethnic groups may focus its procurement policies on procurement equity while another may focus on transparency or efficiency. From the literature, it seems that for both developing and developed countries, a sound procurement system has two broad goals. These are; procurement goals which are primary and non-procurement goals which are secondary (Thai, 2001; McCrudden, 1995; Arrowsmith, 1995; UNCITRAL, 1995).

Primary goals relate to good governance and often include aspects of quality, time, cost, minimisation of risk, maximisation of competition and maintenance of integrity and transparency i.e. efficiency. Secondary goals normally comprise economic goals (e.g. preferencing domestic or local firms); environmental protection or green procurement goals (e.g. promoting use of recycled goods); social goals (e.g. supporting minority-owned businesses) and international relations goals (e.g. bilateral and/or multi-lateral support) (Evenett and Hoekman, 2005; Thai, 2001).

It is crucial to balance the various procurement goals but, making an optimum decision is challenging for policy makers and practitioners because there are always trade-offs among the different goals (Thai, 2001). Sahle (2002) posits that in most developing countries, the lack of clear public procurement goals has resulted in the underutilisation of the potential of procurement in supporting government's socio-economic development goals. Lately, there has been an increasing interest in public procurement regulations / laws and practices internationally (Evenett and Hoekman, 2005).

2.1.3 An Overview of Procurement Reforms

From a development perspective, procurement policies are important because reducing poverty and attaining health, education and other socio-economic objectives require that the scarce resources available for state purchases of goods and services and infrastructure be maximised (Evenett and Hoekman, 2005). Therefore, addressing weaknesses in public procurement and inefficiencies in order to achieve value for money in government and/or donor financed projects is important (Anvuur *et al.*, 2006). As a result, procurement reforms have been underway in a significant number of countries particularly since the last decade (Harland *et al.*, 2005; Evenett and Hoekman, 2005; Watermeyer, 2004).

Some countries have either adopted public procurement rules or regulations for the first time, e.g. China (2001) or reformed their existing procurement legal provisions, e.g. Brazil (1993), RSA (1996 – 2003) and Ghana (2003) (Anvuur, *et al.*, 2006; Watermeyer, 2004). Usually, public procurement reforms have been part of wider reform agendas of particular countries aimed at improving public financial management (Anvuur, *et al.*, 2006). This trend reflects that transparency, sustainability and ethical issues in public procurement are becoming increasingly important (Harland *et al.*, 2005).

In 2005, a study of procurement reforms in 11 countries namely Australia, Belgium, Canada, Germany, Hungary, Italy, Netherlands, Russia, RSA, UK and USA was undertaken by Harland *et al.* (2005). The study reveals that the reforms have focussed mainly on changes in structure and organisation of the public sector, human resource development and the linkage between politics, government objectives and public procurement. Many of the countries are attempting to deal with these issues by influencing legislation / laws. Of these countries, reforms in Australia, Russia and RSA show a strong linkage between procurement and the pursuit of socio-economic objectives, i.e. value for the community, changing the state role in the economy and BEE respectively (Harland *et al.*, 2005).

For most developing countries, however, procurement reforms are influenced by recommendations of the World Bank Country Procurement Assessment Reports (Hawkins *et al.*, 2006; Akech, 2006). In particular, a study by Hawkins *et al.* (2006) indicate that Kenya, Indonesia and Nigeria have recently taken up recommendations to establish legal frameworks for public procurement based on UNCITRAL model law on procurement of goods, construction and services. Kenya and Nigeria have also taken on board the recommendation to create a central authority to be in charge of formulating procurement policy and monitoring its implementation (Hawkins, *et al.*, 2006). Other significant findings

include; a limited number of social objectives in national bidding regulations and documents, difficulties in enforcing social objectives contained in standard multi lateral development bidding documents and an emergence of new procurement strategies and increasing social objectives as a result of greater private sector participation (Hawkins, *et al.*, 2006).

Likewise, the work of Akech (2006) makes a strong case for the need for a reformed national procurement framework in Kenya, to ensure the accountability of international donor partners and the recipient governments to the beneficiaries i.e. citizens. It claims that the previous procurement system had many deficiencies, which included vulnerability to abuse by public officers and fragmentation of procurement policies and regulations (Akech, 2006). However, Evenett and Hoekman (2005) argue that while there is some publicly available information on procurement practices in developing countries, the evidence is insufficient to assess how the laws and regulations translate into practice and how public reform can be successfully implemented.

Further, the potential of procurement to condition access to foreign markets is another reason for the increasing interest in public procurement issues (Evenett and Hoekman, 2005). World Trade Organisation (WTO) disciplines on procurement are currently voluntary and apply only to signatories of the Agreement on Government Procurement (GPA). Proponents of more lateral rules on transparency in government procurement include the European community and its member states, the USA, Japan, Korea and Canada (Evenett and Hoekman, 2005). However, most developing countries such as India and Malaysia have resisted joining the GPA (McCrudden and Gross, 2006; Evenett and Hoekman, 2005).

Evenett and Hoekman, (2005) note that whilst a WTO agreement could provide an international mechanism through which governments credibly commit themselves to transparent regimes, many governments in developing countries have doubts about the benefits of further binding themselves to multilateral rules. These relate to potential risks such as implementation costs, uncertainties about whether the objective is limited to transparency only or not and whether the rules cover only the part which is internationally contested under existing national law or all procurement.

2.2 PUBLIC PROCUREMENT AS AN INSTRUMENT OF SOCIAL POLICY

Public procurement has a long history but, it was only in the 1800s that state legislatures began to create boards or bureaus to be in charge of purchasing (Thai, 2001). Procurement has often been perceived and justified by many governments as a tool for pursuing social and economical policies (McCrudden, 2004; Rogerson, 2004; Thai, 2001;

Gounden, 2000). As early as the 1840s, conditions were initially attached to the number of hours per day for workers involved on certain government contracts in the USA, and later in the UK to minimum wages for workers (McCrudden, 2004; Thai, 2001). A wide range of other socio-economic goals were subsequently linked to procurement such as, promoting fair labour conditions and creating work opportunities (McCrudden, 2004). Preferences in public procurement were also extended to the employment and provision of business opportunities for the disabled (McCrudden, 2004; 1995; Arrowsmith, 1995).

Currently, there is a growing interest and appreciation in the socio-economic aspects of public procurement and its regulation (Cook, 2006; Rogerson, 2004; McCrudden, 2004; Thai, 2001). In many countries such as the Netherlands and Belgium, the use of procurement as a tool to address unemployment continues (McCrudden, 2004). In India, public procurement policies provide that certain products must be purchased exclusively from the small business sector provided prices are within 15% of those offered by the closest competitor (Morand, 2003; Srivastava, 2003). Until the late 1980s, Singapore had a preferential margin scheme of up to 5% in favour of local contractors in government procurement (Ofori, 1995; 1991).

2.2.1 The Procurement-Affirmative Action Linkage

As indicated in chapter 1, there is a linkage between procurement and the elimination of discrimination and promotion of equality among various groups (McCrudden, 2004). As such, public procurement plays a significant role in many countries that have adopted affirmative action. It appears that the basis for the procurement-affirmative linkage flows from the purchasing power of government. The 'right' to spend government money implies that the government has 'power' to place conditions on the party receiving the money in furtherance of its socio-economic goals. Drawing from the USA experience, McCrudden (2004) identifies three types of linkages relating to the use of procurement, these being:

- i enforcing anti-discriminatory law in the employment context, e.g. 'contract compliance';
- ii advancing wider conception of distributive justice, e.g. affirmative action in employment; and
- iii facilitating the stimulation of increased entrepreneurial activity by disadvantaged groups, e.g. set-asides for minority businesses.

From the 1960s onwards, it appears the development in American law influenced other countries (e.g. Canada) to develop anti-discriminatory laws linked to procurement (McCrudden 2004). For some countries, this means that procurement has become a

subject of their constitution. Thai (2001) notes that newer constitutions are more likely to make provisions for public procurement than old ones are. For example, the RSA Constitution (1996) provides that procurement should serve aims of equity and efficiency. Thus, the provision allowing for preferences to be accorded to certain groups in procurement as a means to redress inequality is given constitutional legality. This point illustrated further in Section 2.6.3.

More specifically, procurement has been used in recent years to address what McCrudden (2004) calls, important *quasi-constitutional* problems. Examples include attempts to address; racial inequality in USA, ethnic inequality in Malaysia, unfair treatment of aboriginals in Canada and racial inequality in RSA (McCrudden, 2004). In all these cases, preferential policies are being utilised.

2.3 THE CONCEPT OF PREFERENTIAL PROCUREMENT

Preferential procurement policy is defined by Watermeyer (2003b:11) as “*a procurement policy that promotes objectives additional to those associated with the immediate objective of procurement itself*”. This simplified definition is inadequate considering that additional objectives can be pursued through procurement without necessarily giving preference. In the RSA context, the Constitution (s. 217) defines a preferential procurement policy as a policy “*that provides for categories of preferences in the allocation of contracts and/or the protection or advancement of persons or categories of persons disadvantaged by unfair (sic) discrimination*” (RSA, 1996b). While the RSA government’s definition gives the impression that ‘persons disadvantaged by unfair discrimination’ is a sole criterion, this is not always the case. In practice, preferential policies provide for both ‘direct’ and ‘indirect’ preferencing despite the definition reflecting only ‘direct’ preferencing.

With ‘indirect’ preferencing, preference in the award of contracts is given, for example to an enterprise because previously disadvantaged persons own a certain minimum percentage of shares e.g. 25.1%. To this effect, the remaining shareholders who may not necessarily be ‘persons disadvantaged by discrimination’ also get to enjoy the benefits flowing from the preferential policy. As the case is with BEE in RSA, ‘indirect’ preferencing allows for an enterprise which might not have suffered any discrimination to be given preference in the award of a contract on the basis of scoring high points on its BEE balanced score card (RSA, 2003). The balanced score card is discussed in section 2.6.1.

Against this background, the thesis defines a preferential procurement policy as “*a policy which gives preference in the award of contracts either directly or indirectly to certain categories of people or groups, based on prescribed characteristics, in order to achieve*

specific secondary objectives of procurement". The prescribed characteristics may include gender, race, ethnicity, religion, caste, disability and/or meeting of contract conditions or specifications that facilitate the participation of the target group in the contract being awarded. There are various forms of implementation of preferential policies; some of which are discussed below.

2.3.1 Schemes and Methods for Implementing Preferential Procurement

Table 2.1 Models and Methods for Implementing Preferencing

Scheme type	Methods	Action Associated with the method
Reservation	set asides	Allow only enterprises that have prescribed characteristics to compete for the contracts or portions thereof, which have been reserved for their execution.
	qualification criteria	Exclude firms that cannot meet a specified requirement, or norm, relating to the policy objective from participation in contracts other than those provided for in law.
	contractual conditions	Make policy objectives a contractual condition e.g. fixed percentage of work must be subcontracted out to enterprises that have prescribed characteristics or a joint venture must be entered into.
	offering back	Offer tenders that satisfy criteria relating to policy objectives an opportunity to undertake the whole or part of the contract if that tenderer is prepared to match the price and quality of the best tender received.
Preferencing	preference at the short listing stage	Limit the number of suppliers/service providers who are invited to tender on the basis of qualifications and give a weighting to policy objectives along with the usual commercial criteria, such as price and quality, at the short listing stage.
	award criteria (tender evaluation)	Give a weighting to policy objectives along with the usual commercial criteria, such as price and quality, at the award stage.
Indirect intervention	Product/service specification	State requirements in product or service specifications e.g. by specifying labour-based construction methods.
	contract conditions and procurement processes	Design specifications and/or set contract terms to facilitate participation by targeted groups of suppliers.
Supply side intervention	general assistance	Provide support for targeted groups to compete for business, without giving these parties any favourable treatment in the actual procurement.

Source: Watermeyer, 2003b

Several schemes using public procurement as a tool to deliver socio-economic objectives have evolved in different countries (Watermeyer, 2004a; Gounden, 2000). These include reservations, preferencing, indirect and supply-side interventions. Table 2.1 shows these schemes and the different methods used to implement preferential procurement policies.

Different combinations of scheme types and/or implementation methods are used to support socio-economic objectives. A case in point is the legislation that was passed 2001 in Botswana which provides for both reservation and preferencing schemes to promote citizen contractors, i.e. companies wholly owned by citizens (Watermeyer, 2004a).

In the USA, reservation schemes and supply-side interventions are used while RSA uses preferencing and supply-side interventions (Watermeyer, 2003b). However, the use of procurement as an instrument of social policy is not without controversy (Watermeyer, 2004a; Gounden, 2000).

2.3.2 Preferential Procurement as a Contested Concept

The use of public procurement as an instrument of social policy suffers from a lack of shared understandings. There are opposing views based on moral and economic grounds but with arguments framed differently by various interest groups (Brown, 2004; Watermeyer, 2000; Rice, 1992).

The Case for Preferential Procurement

Preferential procurement policies are mainly supported on the basis of their potential to contribute to the following (Rogerson, 2004; Watermeyer, 2004; 1998; Rice, 1992; Lanoue, 1992);

- i Increased long-term competitive viability of historically disadvantaged firms through provision of business opportunities so they can eventually enter the mainstream economy e.g. developing sub-contractors into main contractors;
- ii Development of business linkages between large established firms and historically disadvantaged firms leading to greater business potential;
- iii Narrowing business ownership gaps or addressing socio-economic imbalances for redistribution purposes;
- iv Promotion of local economic development for disadvantaged minority groups;
- v Enhancement of diversity of participants in the market to match demographic profiles;
- vi Provision of a vehicle through which training and skills development can take place;
- vii Provision of social benefits such as increased job creation through implementation of labour-based technologies or increased use of local resources.

However, despite the benefits, preferential procurement policies have faced criticisms.

The Case against Preferential Procurement

Giving preference to some individuals over others is opposed for both being morally unjust and for introducing an element of inefficiency in the procurement system (Charlton and van Nierk; 1994). It is felt by some that preferential policies reinforce group identities and exacerbate tensions (The FW de Klerk Foundation, 2005; Charlton and van Nierk; 1994). Concerning efficiency; in the short-run, it is always efficient to appoint the most competent person without preferences. Thus, concerns are often raised by some about the potential of undermining the primary objectives of procurement whenever procurement is used as an instrument to achieve socio-economic objectives (Watermeyer, 2004b; Morand, 2003; Watermeyer, 2003a; Naegelen and Mougeot, 1998). Whilst it is acknowledged that any preferential procurement policy will distort the market to which is applied, Watermeyer (2004) contends that preferencing at short-listing stage and award criteria are the two implementation methodologies least likely to compromise the primary objectives.

Literature also indicates that the frequent lack of clear definition of deliverables and non-quantifiable requirements of preferential procurement make auditing and verification of the effectiveness of procurement difficult (Gounden, 2000; Watermeyer, 1998). In addition, the beneficial effects of preferential policies promoted through procurement have also been pointed out by some as being open to question due to lack of data and limited research (Watermeyer, 2003a; 2003b; Gounden, 2000). In spite of the criticisms, Gounden (2000) argues that because of the limited research and data on most programs and schemes, it is difficult to either support or disapprove of them.

However, this research contends that the often incompatible arguments for and against suggest that preferential procurement is a contested concept. It is not neutral but, as Nzimande (2005) suggests, it is subject to contestations and usage of the term preferential procurement does not automatically imply a particular course of action.

Despite the varying viewpoints, many governments continue to use preferential policies in public procurement to pursue redistributive and development goals (McCrudden and Gross, 2006). Thus it is no surprise to see public procurement as an instrument of social policy playing a central role in countries that have adopted some form of affirmative action agenda. Examples considered in detail in this thesis include the USA and Malaysia. Part of the reasons for reviewing the experiences of these two countries is that they have had a considerable influence on preferential procurement policy in RSA (McCrudden, 2004; Gounden, 2000).

2.4 AFFIRMATIVE ACTION POLICIES IN THE USA

The USA affirmative action experience is relevant to the RSA context as most of the arguments for and against affirmative action in the USA are replicated in RSA (Msimang, 2001; Jaret, 1997)

2.4.1 Origins of Affirmative Action in the USA

Affirmative action has a long history in the USA. The term 'affirmative action' made its first appearance in 1965 when it was explicitly used in an Executive Order (EO) No. 11246 in the USA relating to efforts to eliminate discriminatory practices (Guerrero, 1997; McCrudden, 1995). However, the concept or practice of affirmative action had occurred previously in other countries such as India and Sri Lanka and even in the USA prior to the introduction of formal policy (McCrudden, 2004; Sowell, 2003).

Affirmative action became law through the Civil Rights Act of 1964 which prohibited discrimination by privately owned facilities open to the public, federally funded programs, and by both private and public employers (Sweet, 2006; Ong, 1999). Thus, it is rooted in the civil rights movement whose goals were to "end discrimination and promote greater integration of minorities into the nation's political and economic life" (Ong, 1999:9). Affirmative action was initially intended to benefit African-Americans but over time, other groups demanded to be included among the beneficiaries, namely, Native American Indians, Hispanics, Asian Americans and later women, veterans and the disabled (Sweet, 2006; Suinn, 2001). All these groups were considered to have suffered some form of discrimination (Kanya, 2000; Raza 1999).

Research shows that affirmative action is an increasingly controversial and often poorly understood policy that has been quite widely studied by psychologists and other social scientists (Crosby *et al.*, 2006; Blumkin *et al.*, 2005; Fryer and Loury, 2005; Crosby and Clayton, 2004; Crosby *et al.*, 2003; Sowell, 2003; Klineberg and Kravitz, 2003; Fryer *et al.*, 2003; Crosby and Clayton, 2001; Lundberg, 1991). Much of the controversy surrounding affirmative action relates to the difficulty of reaching consensus at many levels including the descriptive, philosophical, psychological and practical (Edward, 1995).

2.4.2 Defining the Concept of Affirmative Action

Affirmative action as a redistributive policy encompasses preferences based typically on membership to a particular race, ethnicity, caste, religion or gender group including disability (Sweet, 2006). However, at the descriptive level, affirmative action has no single or universally agreed upon definition (Crosby *et al.*, 2006). Various authors have provided numerous definitions and interpretations such as the following;

- i “... preferences given to members of a group, typically defined by race or gender and is held to be justified because members of that group have in the past been discriminated against, not because of their individual characteristics, but because they belonged to the group concerned” (Eide, 1992:9).
- ii “... policies which aim to reduce racial inequality” (Weiner, 1993: 82).
- iii “... a set of procedures aimed at proactively addressing the disadvantages experienced by sections of the community in the past...” (Innes *et al.*, 1993:4).
- iv “... all purposive activity designed to eliminate the effects of apartheid and to create a society where everyone has the same chance to get on in life” (Sachs, 1992 cited by Jauch, 1998:64).
- v “... policies that are intended to benefit historically subordinated racial groups and that do so by using race as a basis for allocating burdens and benefits” (Kennedy, 1993: 68).
- vi “... a short-term strategy to open the corporate doors for previously disadvantaged people.” (Adele, 1996:7).
- vii “... any public program or policy either implemented by the state or by the private sector, that is designed to help a particular ascriptively designated group in society, obtain a share of resources that it would not be able to obtain otherwise” (De and Semarasinghe, 1993: 45).

Clearly, affirmative action is a difficult concept to define and encompasses several meanings. The differences in the descriptions may be attributed to the different emphasis placed on certain aspects by theoreticians and practitioners and the inherent political and social connotations of the term. Jauch (1998) observes that some definitions limit affirmative action to a mechanism for achieving representation without allowing for other aspects such as institutional redistribution (e.g. Kennedy, 1993). Some definitions are broad (e.g. Sachs, 1992) so as to accommodate affirmative action as an instrument of fundamental change that should eliminate all inequalities inherent from past discrimination.

Despite the variations, affirmative action can generally be viewed as a series of temporary active measures to redress specific imbalances which exist in society as a result of discrimination on the basis of colour, gender or ethnicity (Adele, 1996; Weiner, 1993). Essentially, it is about scarce resource allocation among competing uses (e.g. Kennedy, 1993; De and Semarasinghe, 1993). This position is also reflected by other authors who state that “affirmative action regulates the allocation of scarce resources in education,

employment or business contracting so as to increase the representation in these positions with persons belonging to certain population subgroups” (Fryer and Loury, 2005:1). Thus affirmative action policies are often expressed in more than one way including as; compensation, equality of opportunity, an end in itself, a means to other ends, diversity promotion or racial equality in justice (Blumkin *et al.*, 2005; Innes, *et al.*, 1993; Edwards, 1995).

For many authors, however, the wide range of definitions and meanings suggest that many people are still misinformed about what affirmative action is (Crosby *et al.*, 2006; Reyner *et al.*, 2005; Fryer and Loury, 2005; Crosby and Clayton, 2001). For example, Fryer and Loury (2005:1) argue that the “American public embraces no coherent conception of what affirmative action actually is”. They contend that many researchers (e.g. Kravitz *et al.*, 1996) now avoid using the term ‘affirmative action’ altogether opting to describe a programme’s specific contents in the questions asked to avoid misunderstandings that can easily take root when concepts are unclear (Fryer and Loury, 2005). Further, Crosby and Clayton (2001) assert that people’s reactions to affirmative action depend on what they understand or imagine affirmative action to be. Similarly, Reyner *et al.* (2005) posit that people formulate opinions on affirmative action according to the version which best suits their ideological perspective. All these different views suggest that affirmative action is not value-free and is highly contentious.

2.4.3 Affirmative Action Policy Debates in the USA

The various anti-discriminatory social policies embodied in the concept of affirmative action are lauded by some (eg. Crosby *et al.*, 2003; Suinn, 2001; Qunta, 1995;) and criticised by others (e.g. Alexander and Schwarzschild, 2004; Sowell, 2003), with most sources addressing both sides of the argument (e.g. Crosby *et al.*, 2006; Jaret, 1997; Edward, 1995; Charlton and Van Niekerk, 1994). Overall, the arguments for affirmation action have included; eradicating inequalities of race and gender, improved industrial relations, greater respect for different cultures and values, less stress at work as employees fulfil their potential, increased productivity, more equitable income distribution leading to higher domestic demand and long-term greater economic growth (Crosby *et al.*, 2003; Suinn, 2001; Msimang, 2001; Jafta, 1998). Based on various sources cited, support for affirmative action has anchored mainly on fairness, promotion of diversity and long-term efficiency.

For critics, there are arguments that affirmative action undermines the principles of fairness resulting in ‘reverse discrimination’ (Alexander and Schwarzschild, 2004; Wilmore, 1997; Charlton and Van Niekerk, 1994). Affirmative action is considered by some to be

fundamentally flawed as it prioritises group membership over merit (Reyner *et al.*, 2005). Others argue that the costs involved in complying with and implementing affirmative action measures are too high (Jafta, 1998). In addition, there are indirect costs such as delays in hiring and recruiting caused by time consuming affirmative action regulation and interference with market mechanisms where resources are sometimes allocated away from areas that might be of highest return (Jafta, 1998).

The misallocation of resources due to delays or hiring of less skilled workers or contractors reduces possible productivity gains, lending support to the lack of merit and inefficiency arguments used by critics. Affirmative action is further criticised for encouraging a culture of entitlement that undermines initiatives and self-confidence of beneficiaries while reinforcing negative stereotypes, racial tension and stigmatisation (The FW de Klerk Foundation, 2005; Batts, 2003; Carter, 1991). From the foregoing, opposition of affirmative action centres on the demerits such as lack of fairness, lack of merit, inefficiency and the high costs involved.

Although this thesis uses the term affirmative action policy (as singular), affirmative action does not refer to a single policy or strategy. It is pursued through various programmes, policies, strategies and procedures which can take different forms (Innes *et al.*, 1993; Weiner, 1993). That said, most affirmative action programmes fall into one of the three areas: employment, education and government contracting (Sweet, 2006; Crosby *et al.*, 2006; Crosby *et al.*, 2003; Ong, 1999). The application of affirmative action in government contracts or procurement in the construction industry is the focus of this research.

2.4.4 Legislative Framework for Government Procurement

The legislative framework supporting affirmative action in government contracting and procurement in the USA can be traced back to the Small Business Act (SBA) of 1953 (Lanoue, 1992). The SBA was enacted to provide for the setting aside of a percentage of government contracts for small enterprises (Crosby *et al.*, 2003). Later in 1965, EO 11246 was issued which required all government contractors and subcontractors to end discriminatory practices and expand job opportunities for minorities and women including set-aside programmes (Crosby *et al.*, 2006; Sweet, 2006; Crosby *et al.*, 2003; Qunta, 1995; Raza, 1999; Crosby and Clayton, 2001). EO 11246 required federal contractors, first in Philadelphia ('Philadelphia Plan') and later in 55 other cities, to utilise minority employees as a pre-condition for getting federal contracts (Sweet, 2006).

Therefore, construction became the first sector in which an explicit approach of affirmative action was developed by the federal government (McCrudden, 1995). McCrudden (1995) provides three main reasons why construction was favourable in this regard. First,

construction is one of the major sectors of the economy which could generate employment opportunities for a large number of unemployed blacks. Second, from a political viewpoint, employment opportunities generated within the industry are highly visible and much of the new construction work undertaken at the time was within the context of urban renewal in or near large black neighbourhoods. Third, the industry was highly dependant on public funds, with the federal government at the time being responsible for at least one third of the expenditure, giving government high leverage. Sweet (2006) adds to this that construction is still a dominant landscape of affirmative action programmes because it's likely to assist minority contractors the most owing to its transitory nature of work and few barriers to entry.

In 1969, EO 11458 identified minority-owned businesses as one type of small businesses (Sweet, 2006; Crosby *et al.*, 2003). In 1970, Order No. 4 authorised flexible goals and time-tables to correct under-utilisation of minorities by federal contractors (Ong, 1999; Raza, 1999). Public Works Employment Act (PWEA) of 1977 and Public Law No. 95-507 of 1978 both authorised set-aside programs so that a portion of procurement contracts could be awarded to minority businesses (McCrudden, 2004; Chay and Farlie, 1998; Lanoue, 1992). The set-asides aimed at furthering the development of an entrepreneurial black middle class through public works construction projects, counter effects of discrimination and reduce unemployment (Marion, 2005; McCrudden, 2004; Chay and Farlie, 1998).

2.4.5 Current Research on Minority Business Enterprise Programmes

Affirmative action programmes in government contracting and procurement are termed as minority business enterprise (MBE) programmes (Sweet, 2006; Marion, 2005; Lanoue, 1992). An MBE, also known as a disadvantaged business enterprise (DBE) is defined as a business half or more of which is owned by minority group members (Marion, 2005; McCrudden, 2004; Myers and Chan, 1996). However, it is often difficult to determine which ethnic group to give preference over the other (Lanoue, 1992).

MBE participation is mainly through two ways: the first is where a certain percentage of the number or dollar value of contracts are allocated to minority-owned businesses and the second is where the prime contractor is required to allot a specified percentage of the total amount of contracts to minority-owned subcontractors (Chay and Farlie, 1998; Myers and Chan, 1996). According to Lanoue (1992), MBE programmes have provided training, capital and networks for new MBEs and have 'forced' established businesses to share opportunities with them and enabled new enterprises to enter previously exclusive fields (Lanoue, 1992).

MBE programmes typically provide favourable treatment for minority-owned businesses in the bidding process for government contracts (Sweet, 2006). The favourable treatment includes set-asides whereby only targeted groups can compete; bid-enhancements whereby the bids submitted by MBEs are not compared directly to the otherwise lowest bidder and goals whereby the prime contractor is often required to make good-faith efforts in subcontracting with MBEs (Sweet, 2006). However, Lanoue (1992) contends that by creating “sheltered-markets” for firms that may be less efficient competitors, the MBEs raise the costs of public contracts.

MBE programmes are not confined to the construction industry alone, thus research available on these programmes is often cross-sectoral. Sweet (2006) argues that literature on the effectiveness of affirmative action in government contracting in particular has two major limitations. First, researchers have not developed a valid and reliable method of deducing the purpose of affirmative action. The argument goes on to say that those who have studied the impact of MBE programmes empirically seldom addressed the issue of the goals of such programmes, but rather have implicitly attributed goals to them and tested them.

For example, Bates and Williams, (1996) tested whether the programs had increased sales; Myers and Chan, (1996) the amounts of contracts and Boston, (1999) the number of minority-owned businesses. Sweet (2006) claims that these researchers did not test whether what they investigated were actually the aims of the programmes, suggesting that a form of bias has entered into the evaluation. Second, most of the existing evaluations assume that an MBE programme on paper is the same as a fully implemented programme yet this is often not the case (Sweet, 2006).

Despite the gaps in the literature, several studies have made notable contribution to enhancing the understanding of the impact of MBE programmes in the USA. Some of them are highlighted. The study by Myers and Chan (1996) show that although the total number of contracts awarded to MBEs and number of MBEs receiving awards increased during the set-aside period, the success rate did not increase and the changes in white-owned firms were greater. The study suggests that MBEs programs do not have a substantial impact on the number of contracts awarded to black-owned firms submitting tenders. It also suggests that MBE programs are effective only in as far as they enable minority-owned businesses gain a foothold to economic opportunities. Bates and Williams (1995) found that businesses that derived most of their work (over 25%) from government were less likely to survive than those that also got work elsewhere.

Results obtained by Boston (1999) indicate that in cities with MBE programmes, black businesses grew at a slightly higher, though statistically insignificant rate than in cities without the programmes. Bates and William (1993) got similar results to those of Boston. In their study, they found an increase in the sales of black businesses and a growth in the number of black businesses in cities with black mayors, reflecting their possible support of MBE programmes (Bates and William, 1993). Based on a small sample in the construction industry, Chay and Farlie (1998) show that self-employment for blacks increased after the application of preferential procurement. In contrast, the findings by Sweet (2006) indicate that affirmative action in government contracting does not significantly increase minority employment and is statistically insignificant in eradicating discrimination in contracting in the construction industry.

In his writing, Lanoue (1992) acknowledges that while some genuine mentorships have occurred, other relationships between MBEs and Non-MBEs have resulted in switches, fronts and conduits. These relationships are described as follows: “switches commonly occur when ownership is transferred from husband to wife to create a woman-owned enterprise. White males often set-up front companies with a woman or minority who has little or no operating control. A white prime contractor may subcontract the required work to a conduit minority/woman-owned enterprise that does no real work” (Lanoue, 1992:111). Similarly, a study by Jacoby (1998) in the Atlanta construction industry support Lanoue’s findings by showing that the MBE programme was rife with abuses through the use of ‘fronts’. *Fronts* refer to non-minority-owned businesses that use qualified minorities as either ‘pass-through’ organisations or businesses that sign over control to a minority owner in name only (Lanoue, 1992).

Similarly, a study by Bates and Williams (1995) shows that minority enterprises in the construction industry behave in ways that suggest sensitivity to penalties for violating minority business certification and procurement program requirements. In their view, these firms flourish in the absence of fraud penalties and a different group benefits in an environment in which MBE certification is comprehensive, bonding and working capital assistance available. They also allege that motivations for fronting are diverse including structural deficiencies in the preferential procurement programs. Likewise, Bates and Williams (1996)’s findings suggest that preferential procurement programs often promote minority business dissolution when large contracts are awarded to young MBES. Their findings are consistent with practices of minority firms serving as front companies and small firms being awarded large contracts they cannot handle as established in their earlier study (Bates and Williams, 1995).

Evidence, both theoretical and empirical as shown above is mixed. Nevertheless, affirmative action is often correlated with increases in levels of participation of minorities and women in government contracts over time (The FW de Klerk Foundation, 2005).

2.4.6 Affirmative Action Policy: Current Concerns

Affirmative action has redefined the way groups are socially constructed in the USA. Race and gender which had previously been the criteria for subjugation of disadvantaged groups have become the criteria for identifying groups to be given preference in hiring, contracting and education (Ong, 1999). The practice of preferential policies has shown potential to create divisions and animosity between different population groups (The FW de Klerk Foundation, 2005; Sowell, 2003).

As affirmative action evolves, it has raised many fundamental philosophical disagreements related to constitutional questions (Sweet, 2006; Crosby *et al.*, 2006; Ong, 1999; Skrentny, 1996). Since the 1970s, opponents have turned to the courts to challenge its constitutional legality (Crosby *et al.*, 2006; Ong, 1999; Jaret, 1997; Skrentny, 1996). To date, various courts have given different, sometimes conflicting opinions on the legality of affirmative action across education, employment and contracting (Sweet, 2006; Fryer and Loury, 2005; Crosby *et al.*, 2003). In comparison to earlier rulings, court standards have shifted to requiring government to demonstrate a compelling interest for the affirmative action programme and to narrowly tailor the programme to accomplish further that end i.e. the strict scrutiny test (Fryer *et al.*, 2003; Ong, 1999; Bates and Williams, 1996).

In recent years, the constitutionality of set-asides has been challenged and the Supreme Court has severely curtailed the utilisation of set-side programs (Crosby *et al.*, 2003). In the famous case of *City of Richmond v. Croson* (1989), failing to find either a compelling state interest or legislation narrowly tailored to that interest, the Court ruled the Richmond MBE programme unconstitutional (Sweet, 2006; Chay and Farlie, 1998; Lanoune, 1992). In two recent cases (2003) in education, the Court held in one (*Grutter v. Bollinger*) that the race-sensitive law school admission policies were constitutionally permissible because the state has a compelling interest in ensuring diversity in state-sponsored schools and the policy was sufficiently narrowly tailored (Muruyama, 2004; Crosby, Iyer and Sin, 2006; Sweet, 2006). In the second case of *Gratz v. Bollinger*, the court ruled that the university undergraduate admission policy was unconstitutional (Sweet, 2006; Muruyama, 2004).

The split decision of the cases has added to the controversy. Some (e.g. Renner, 2004) see it as a further shift of the justification for affirmative action from equality and remedying past discrimination to equality and diversity. For others (e.g. Sekhon, 2004) the ruling is simply inconsistent. It seems unlikely that the Court will become more amenable

to rolling out affirmative action as it also expressed some ambivalence in the rulings (Sweet, 2006; Fryer and Loury, 2005; Muruyama, 2004; Renner and Moore, 2004). In the meanwhile, the practice of affirmative action continues.

2.5 PREFERENTIAL POLICIES IN MALAYSIA

The Malaysian model of affirmative action called the New Economic Policy (NEP) has some similarities with the RSA BEE model. There are also similarities between the two countries such as the demographic majority benefiting from affirmative action programmes and religious differences coinciding with ethnic ones (Charlton and van Niekerk, 1994). Additionally, the beneficiary groups in both countries have the political power to legislate and enforce policy. In Malaysia, the economic power is in the hands of the minority group (Chinese) while the political power vests with the Malays (Lanti, 2004; Kanya, 2000) as explained below.

2.5.1 Origins of Preferential Policies in Malaysia

During the late 1880s and early 1900s, there had been a continuous immigration of Chinese and Indians to Malaysia which, prior to consolidation of the British rule, was mainly populated by Malays and other indigenous groups (Lanti, 2004; Jauch, 1998). The Malays and other indigenous groups are referred to as Bumiputra which means 'sons of the soil'. However, since Malays make up the majority in this group, Bumiputra is often used synonymously with Malays in much of the literature and in this thesis too.

The Chinese migrated in pursuit of economic opportunities created by the British as the increasing demands for labour were inadequately met by the indigenous Malay population (Lanti, 2004; Jauch, 1998). The Chinese were mainly engaged in the trading and business sectors in urban areas whereas the Indians came primarily to work on Sugar and Rubber plantations and Tin mines (Lanti, 2004). Malays were deemed poor industrial workers and mostly lived in rural areas where they remained uneducated and embedded in traditional values systems (Emsley, 1996).

Although most writers have linked policies to promote the socio-economic status of Malays in relation to Non-Malays to the NEP, these policies can be traced back to the colonial period (McCrudden and Gross, 2006; Lim, 1995). Affirmative action to favour the Malays originated from the concept of Malay Special Rights introduced by the British colonial rule in the late 1800s (McCrudden and Gross, 2006; Lim, 1995). By granting Malays special status, the colonial authorities hoped to create the illusion that the Malays were still the rightful owners of the country and Britain was only a trustee (Singh, 2000; Lim, 1995). These special rights applied in the Malays' traditional form of existence

(fishing and farming), in governance, education and government recruitment policies (Lim, 1995).

Malay Reservation Enactment was passed in 1913 to protect Malays from losing their land to non-Malays but, this worked against Malay welfare (Lim 1995). The Act designated certain areas to be reserved for Malay ownership only. As the non-Malays could not hold mortgages on Malay reservation land, the land in question was not acceptable as collateral by non-Malays. This limited the supply of credit for the Malay peasants and impacted negatively on the land values. In addition, poorer Malay peasants lost their land to richer Malay peasants and landlords as there were no provisions in the Act to protect them against such. Lim (1985) suggests that it was this very 'protection' of Malays in their traditional mode of existence that prevented them from participating in modern economic activities and consequently remaining economically and socially 'backwards' relative to other communities.

The British ruled indirectly whereby most junior administrative duties were relegated to the Bumiputra and the plantation, industrial and commercial companies were owned by Europeans and some Malay royal families (Lanti, 2004). The Chinese and Indians held the skilled labour, middle management positions and clerical positions. This division of labour created some form of 'separateness' in the social, political and economic spheres (Lanti, 2004; Jauch, 1998). At the time of Malaysia's independence in 1957, the Malays were already concentrated in the lowest paying occupation i.e. the agriculture and fishing sectors. While Malays made up 73% of population, only 10% were industrial workers and owned only 1.5% of the total capital invested in registered companies (Ramasamy, 1993). The mean household income of Malays were much lower at (\$139 per month) to that of Chinese (\$300) and Indians (\$237) respectively (Ramasamy, 1993).

The 1957 elections had been won by the United Malays National Organisation (UMNO), Malaysian Chinese Association (MCA) and Malaysian Indian Congress (MIC) who formed an alliance government (Emsley, 1996). Malaysia was faced with an economically disadvantaged majority on the one hand, and two minority but, economically dominant groups i.e. Chinese and Indians on the other (McCrudden, 2004). The alliance government's bargaining led to the incorporation of provisions guaranteeing non-discrimination in the constitution modelled on the Indian constitution but also providing reservations in favour of the 'Bumiputra' (McCrudden, 2004; Emsley, 1996).

The programs of Malay preference were quite modest and emphasised economic growth rather than redistribution. Therefore, despite the constitutional provisions, the relative backwardness and deprivation of the Malays persisted (Emsley, 1996). In 1969, although

the Bumiputra represented 62% of the population, they only owned 2.3% of the nation's commercial equity and 65% still lived in poverty. The Chinese who were 26% of the population, held 22.8% commercial equity and 27% lived in poverty (McCrudden and Gross, 2006). The Malays were dissatisfied with the resource distribution, leading to racial tensions culminating in a serious riot in May 1969 (McCrudden and Gross, 2006; Abdullah, 1997; Emsley, 1996).

Following the 1971 elections, the new Malay-dominated government aggressively pursued Malay preferences (Abdullah, 1997; Emsley, 1996; Lim, 1995). It became government's stated goal to create social integration and racial stability by attempting to make the Bumiputra become major participants in the economy within one generation (McCrudden and Gross, 2006). In line with the national goals, the constitution was amended to entrench the system of preferences by removing their time-limitedness and making the questioning of the Malay special privilege a criminal offence (McCrudden and Gross, 2006; Abdullah, 1997). According to the Sedition Act, the offence is punishable by up to 3 years in jail and/or a fine of RM50 000 (approximately US\$ 1300) (McCrudden and Gross, 2006).

2.5.2 The New Economic Policy: NEP

To entrench Malay power, the NEP was passed to provide a blue print for a comprehensive affirmative action programme for the Bumiputra (Dahaban, 2004; Guan, 2000; Emsley, 1996; Lim, 1995). The NEP was articulated most clearly in the 2nd Malaysian Plan (1971 – 75). Its goal was to achieve greater ethnic integration by eliminating inter-ethnic income inequalities and restructuring employment, education and wealth (McCrudden and Gross, 2006; Dahaban, 2004; McCrudden, 2004; Jomo, 2001; Engdahl and Hauki, 2001; Guan, 2000; Abdullah, 1997; Emsley, 1996; Lim, 1995).

NEP had a two-prong approach. One set of policies aimed at promoting economic integration by focussing on reducing and eventually eradicating poverty and raising income levels with the aim of eliminating the identification of race with economic function (Dahaban, 2004; Jomo, 2004; Abdullah, 1997; Emsley, 1996; Lim, 1995). The second prong targeted at promoting social integration was the essence of affirmative action. It aimed at restructuring the imbalances in the society by focussing on equalising equity ownership and creating a Bumiputra commercial and industrial community middle class (Jomo, 2004; Abdullah, 1997; Emsley, 1996; Lim, 1995).

Under NEP, specific provisions were made giving preferences to the Bumiputra in employment in public service, in education, in land distribution and granting of trading and business licences and permits; ownership of equity; acquisition of shares in private corporations held by government in trust and provision of financial and technical

assistance (McCrudden and Gross, 2006; Engdahl and Hauki, 2001; Lim, 1995; Esman, 1987). Esman, (1987) reports that public sector expanded from 21% to 29% of the economy during the first 10 years of NEP. During this period, the public sector was the largest and highest paying employer (Lin, 1982).

Efforts were directed towards the reduction of recruitment of non-Malays following the introduction of new conditions for government employment such as 'local born' and 'locally educated status' and requirement for non-Malays to obtain a pass in Malay language to qualify for employment in public service (Ramasamy, 1993). The large state enterprises and their subsidiaries employed Bumiputra exclusively in their managerial ranks and used their influence to encourage the development and expansion of Bumiputra suppliers (Ramasamy, 1993; Esman, 1987).

Public expenditure for public enterprises jumped from 32% of total allocation before NEP to 48%, 50% and 56% in the first 3 five year plans of NEP respectively (Esman, 1987). Failure rates of enterprise in the public sector were also high. Of the total 1,133 companies in which government had an interest, only 847 were active and 286 were either inoperative or under receivership (Esman, 1987). This was partly attributed to most Directors not being appointed on the basis of management ability and experience but other political and bureaucratic criteria linked to preferential policies (Esman, 1987). The Bumiputra had little experience in risk-taking either in small or medium-sized businesses, which remained in the hands of the Chinese (Esman, 1987).

2.5.3 Preferential Policies in Government Procurement

An important facet of the NEP strategy that rose to prominence in the 1970s was the use of procurement contracts structured in ways that would over time generate an entrepreneurial Malay middle class (McCrudden and Gross, 2006; McCrudden, 2004). The government used its power as a regulator to bolster the system of preferences by institutionalising preferences for majority Bumiputra-owned or controlled companies in the award of government contracts. As a client, the size of the Malaysian government procurement is considerable, estimated at over RM 100 billion p.a. (about US \$26 billion) in 2003 and representing over a quarter of GDP (McCrudden and Gross, 2006).

The NEP strategy also aimed at increasing Bumiputra share ownership in Malaysian public companies with 20-year target goals to be met to 30% by 1990 from 2.4% in 1970/1 (Butler, 2006c; McCrudden and Gross, 2006; Jomo, 2001; Abdullah, 1997). The Industrial Co-ordination Act 1975 provided the government with the means to implement equity policies particularly in the manufacturing industry (McCrudden and Gross, 2006; Abdullah, 1997). Generally, the government believed that companies that were majority Bumiputra

would also be more likely to increase the proportion of Bumiputra employees (McCrudden and Gross, 2006). NEP appears to have been about creating the same class structure in the Bumiputra community as in the non-Bumiputra communities (McCrudden and Gross, 2006). This may reflect the aim of NEP to reduce inter-ethnic inequality as opposed to inequality *per se*.

Types of Preferences in Government Procurement

Malaysia has been utilising significant preferences in public procurement to promote developmental policies aimed at improving the economic standing of the Bumiputra (McCrudden and Gross, 2006; Abdullah, 1997). Since the mid 1970s, a large percentage of government's total procurement expenditure is allocated to two types of providers/suppliers through two sets of interrelated preferences (Cheng, 2006; McCrudden and Gross, 2006). These are preferences for Bumiputra and preferences for other domestic providers.

Preferences for Bumiputra in government procurement have been, and continue to be, focussed on the creation of mainly Bumiputra-owned SMEs (McCrudden and Gross, 2006). Government concentrates the preferences in lower value contracts where SMEs are better positioned to compete (McCrudden and Gross, 2006; Morand, 2003; Fee *et al.*, 2003). Bumiputra preferences have evolved over time to a complex arrangement of set-asides and price preferencing which come in different forms and sizes (McCrudden and Gross, 2006). According to McCrudden and Gross (2006), the complexity and variety of Bumiputra preferences reflect the government's attempts to make the preferences more effective in delivering policy goals and minimising the reported abuses of the system through practices such as fronting.

Over time, Chinese companies could no longer afford to just provide cosmetic changes and rent-seeking opportunities for Malay individuals and companies without allowing for meaningful participation of Malays (Jesudason, 1997). The cost of failing to adjust to the new realities of ownership and control in Malaysia has been reported to be high for many non-Malay companies (Jesudason, 1997). Experience also shows that the results of the preferential policies in government contracting have been mixed. As one writer points out, there has been "the development of Malay business interests ranging from state corporations, rentier capitalism, politically well connected entrepreneurialism, genuine business and a wide range of small business connections (Jesudason, 1997:129).

For the construction industry, tender quotations up to the value of RM 200 000 (about US\$ 55 000) are restricted to Bumiputra owned or controlled companies only (Cheng, 2006). Further, a local contractor who wishes to participate in government construction project

tenders reserved for Bumiputra only must be registered as a Bumiputra contractor with the Ministry of Entrepreneur and Co-operative Development (Cheng, 2006). Local contractors have to generally comply with the following conditions:

- i Company should be registered with the Centre for Contractors Services (PKK), Ministry of Entrepreneur and Co-operative Development and the Construction Industry Development Board (CIDB) Malaysia;
- ii Contractors can only participate in tenders for works as per the contractor class; Head and Subhead;
- iii Registration must be valid to cover the period of tender; the company registration must not have been suspended or cancelled by the PKK and CIDB (Cheng, 2006).

The second category of preferences comprises relatively straight forward set-asides which often restrict procurement to domestic sources unless one is not available (McCrudden and Gross, 2006). This category has helped to mitigate the negative impact of Bumiputra preference on other domestic providers (McCrudden and Gross, 2006). However, there are concerns by USA firms in Malaysia about the preferential treatment accorded to the Bumiputra in government procurement on big projects (Cheng, 2006). The main concern is the lack of transparency in the award process of the major tenders. Cheng (2006) contends that although Malaysia does not openly state that certain projects are being allocated to qualified bidders from particular ethnic groups or via other criteria, there are cases in which the Malaysia government has awarded contracts or has short listed contractors without a proper bidding process (Cheng, 2006). As a result, many USA firms are easily discouraged to compete in this market.

Internal Controversy over Preference Policies

At a policy level, preferences are largely supported by Malays as being equitable based on their inherent privilege or indigenous status and opposed by Non-Malays as being unfair and discriminatory (Engdahl and Hauki, 2001; Lim, 1995). At practical level, a sizeable Malay middle class emerged in the 1980s whose interests no longer necessarily coincided with state or government interests (Singh, 2001). This middle class can now acquire their own interests, and decrease their dependence on government and state for protection and feel less threatened by the Chinese economic power (Singh, 2001).

However, although the emergent Malay middle class has helped to minimise ethnic cleavages, it's also plagued with contradictions (Lim, 1995). In particular, tensions have increased within the Malay community concerning the allocation of resources, especially those reserved under Bumiputra category whose main beneficiaries have been UMNO leaders, their associates and some non-Malay elites (Lim, 1995). Richer Malays found it

easier to use opportunities in tertiary education, better paid managerial positions, cheap shares, loans and government contracts provided by ethnic preferencing (Emsley, 1996). This supports the argument that the beneficiaries of affirmative action have been those who already have a comparative advantage over their poorer counterparts (Jafta, 1998; Willmore, 1997).

Experience has also shown that entrepreneurship among the Malays could not be quickly created particularly because of lack of capital and technical and managerial skills (Emsley, 1996; Lim, 1995). Rather, most Malays opted (and still do) to go into joint ventures with, or subcontract or sell their contracts (and licenses or permits) for a fee to, non-Malays (McCrudden and Gross, 2006; Emsley, 1996; Lim, 1995). Such practices typically undermine government's effort to develop Bumiputra skills and entrepreneurship.

Moreover, McCrudden and Gross (2006) assert that preferential policies have the potential to decrease entrepreneurial activity amongst the target group because the preferences have established "dominant and undynamic" Bumiputra groups. They argue that these groups hinder the creation of a more vibrant entrepreneurial community by acting to exclude new Bumiputra entrants. In addition, most Bumiputra contractors are often seen as being too dependent on government contracts (Engdahl and Hauki, 2001).

2.5.4 Policy Context of Preferential Policies and Outcomes

Ethnic preference in favour of the Bumiputra was justified as a political and moral imperative by the Malay government (Lim 1995). The policy context in which the redistributive policies developed reflects the extent to which the government situated them within an "overall economic policy of substantially investment-led economic growth" (McCrudden and Gross, 2006: 167). The emphasis of NEP was supply-side oriented in order to reduce racial imbalance through rapid economic development and inclusion of the Bumiputra in the social and economic development process (Emsley, 1987). Within this setting, Malaysia focussed on labour-intensive growth and made significant progress in implementing affirmative policies whilst still maintaining economic standards (Emsley, 1996; Charlton and van Niekerk, 1994).

Economic growth was vital for generating resources that could be redistributed disproportionately in favour of the Bumiputra. From the government's point of view, redistributive policies were justified as being essential for providing a stable political context to attract investment (McCrudden and Gross, 2006). Likewise, to minimise ethnic tensions and achieve the goal of greater stability, redistribution had to be financed from increments of economic growth rather than 'squeezing' the Chinese and Indian population and/or risk losing foreign capital (McCrudden and Gross, 2006; Lim, 1995; Esman, 1987).

The economy grew at an average of 7% p.a. and by 1983, the socio-economic position of the Bumiputra improved: ownership of corporate wealth grew from 2.4% in 1970 to 27.2% in 1988; overall incidence of poverty fell from 49% in 1970 to 22.4% in 1987; the total number of Bumiputra professionals increased from 4.9% in 1970 to 25.1% in 1988 (Kanya, 2000; Koon, 1997; Emsley, 1996; Esman, 1987). Most of the numerical goals set for the 20-year period had been achieved and in some instances exceeded (Jomo, 1989).

Despite these achievements, Lim (1995) argues that state intervention was not necessarily an efficient and equitable means of redistribution. The reason cited is that the cost to the economy was huge; it crowded out the private sector in employment, investment and saving and heavy public expenditure was incurred. Dahaban (2004) counter argues that while the policies might have had some negative effects on the growth rate, opportunity costs and participation of non-Bumiputra in business, these effects were negligible. The argument goes further that these were outweighed by the achievement of the poverty reduction and reconstruction programs as well as the virtual absence of racial strife since the 1969 riot.

In view of changing external conditions, NEP was continually amended until it was terminated in 1991 and replaced with the National Development Policy (NDP) (McCrudden and Gross, 2006; Dahaban, 2004). The NDP (1991-2000) was similarly based on a philosophy of growth and equitable redistribution but, redistribution was seen as more dependent on economic growth than previously (McCrudden and Gross, 2006; Dahaban, 2004). The NDP signified a shift from state intervention approach to a greater acceptance of market-shaped policies (Henderson, Hulme, Phillips and Nur, 2002). Under the NDP, the government reduced its involvement in the economy and adopted privatisation policies but, with a significant redistributive aspect of share distribution to Bumiputra (McCrudden and Gross, 2006).

Thus government contracting became a much more important function considering that many activities previously undertaken by government were now to be executed by contracted private enterprises (McCrudden and Gross, 2006). The integration of the Bumiputra into the formal Malaysian economy contributed positively to Malaysia's overall competitiveness (Ministry of Finance, 1997). Aziz and Ofori (1996) add that by linking development goals with privatisation programmes, the government was able to stimulate the growth of local contractors who have subsequently acquired significant market shares in the Asian regional market.

2.5.5 Preferential Policies: Current Concerns

Malaysia's affirmative action is generally considered to be the world's most extensive and one of the most successful (Emsley, 1996). Esman (1987) attributes the success to the demographically majority Malays, economic subordination of non-Malays, political opportunity that enabled the majority to gain control of the state, a nationalist ideology and good fiscal policies. The underlying philosophy of affirmative action in Malaysia has been that narrowing socio-economic inter-ethnic disparities would lead to ethnic integration (Dahaban, 2004; Guan, 2000; Abdullah, 1997; Lim, 1995). Some studies however, seem to suggest that while the socio-economic condition of the Bumiputra has generally improved, not much ethnic integration has occurred (Lim, 1995). Further, according to Butler (2006c), the Malay elite have benefited disproportionately thus their rent-seeking behaviours and dependencies on government favours have tarnished the purported success of Malay empowerment.

The program of preferences demonstrates how public sector procurement was utilised to promote the economic development of the indigenous Malays. Current government policy (within the Vision 2020 framework), requires procurement to be used to further national policy objectives such as encouraging participation of Bumiputra in the economy, creating opportunities for local companies and transferring technology to local industries (Cheng, 2006). In most cases, foreign companies are required to partner with local companies for their bids to be considered.

McCrudden and Gross (2006) maintain that Malaysia has political and legal arrangements that run against the grains of the fundamental elements of the proposed global public procurement rules. They speculate that Malaysia has resisted being bound by international public procurement rules for fear of losing its ability to use procurement as part of its development agenda, particularly in terms of its redistributive policies to promote the Bumiputra (McCrudden and Gross, 2006). Against this background, Cheng (2006) emphasises that the role of government as a major consumer of goods and services is a significant factor in the success or failure of businesses.

A major contrast between the systems of preferences adopted in Malaysia and those of the USA (and other countries) is that in the former, the preferences remain outside the area of constitutional litigation (McCrudden and Gross, 2006). Experience also shows that on one hand, beneficiary groups will always strongly resist any attempts to end the preferences accorded to them (Ramasamy, 1993). On the other, the continued enforcement of preferences leads to discontentment of the non-beneficiary groups and polarisation of communities (Ramasamy, 1993). For example, India and Sri Lanka

experiences show high incidents of violence and confrontation among the various groups over preferential policies (Jauch, 1998; Charlton and van Niekerk, 1994; Ramasamy, 1993).

Although adapted to suit local conditions, RSA preferential procurement policies embody elements of both the USA and Malaysia affirmative action policies (McCrudden, 2004; Gounden, 2000). The preferential procurement policies are framed within the broader context of BEE which is a derivative/form of affirmative action.

2.6 THE EVOLVING CONCEPT OF BEE IN SOUTH AFRICA

Given the linkage between government procurement and socio-economic development, it is not surprising that procurement has emerged as an important regulatory mechanism to address the effects of institutional discrimination and inequality (McCrudden, 2004). In fact, the vision of an economy that caters for all people in RSA dates as far back as the Freedom Charter of 1955 and was refined in the RDP in 1994 (DTI, 2003). During the 1970s and 1980s, there were several attempts to incorporate blacks in the mainstream economy by the private sector. This process was mainly driven by multinational companies who were under pressure to address black economic advancement in the face of sanctions and disinvestments in RSA (McCrudden, 2004).

From 1990 onwards, the process of incorporating blacks in the socio-economic activities of the country accelerated particularly as political change gathered momentum, with affirmative action emerging as a key objective (RDP, 1994). According to Innes, *et al.*, (1993), ANC's concern was that while white males were a very small proportion of the total workforce (10% -15%), they occupied a much greater proportion of the top paying professional and managerial posts. The aim of affirmative action was therefore to "ensure that people who were discriminated against in the work situation are empowered to enable them to gain access to and compete for all posts, including those at high level" (Innes *et al.*, 1993 :42).

Since coming to power in 1994, the democratic government has taken various steps to achieve greater diffusion of economic power among the historically disadvantaged groups. The government has focussed on the investment in physical and social infrastructure as a key strategy to restructure an economy characterised by skewed ownership patterns and slow growth (DTI, 2006a). The restructuring process entails the equitable integration of the majority historically marginalised groups into the formal economy through BEE policies. The government argues that incorporating blacks who make up the majority of the population is crucial for the economy as they should in time provide the bulk of skilled personnel, thereby making a good business case for BEE (DTI, 2003).

In the early to mid 1990s, the 'buzz word' was affirmative action. During this period, the focus of economic empowerment was on employment equity guided by the Employment Equity Act (EEA), 1998 (RSA, 1998a). The EEA reflected government's approach then which focussed on the promotion and recruitment of blacks and women in middle and senior company positions and their appointment to other key positions. It was generally recognised that employment equity was helping in the creation of a middle class with substantial purchasing power which was contributing to the economy. However, one major criticism was that for affirmative action to succeed, the majority black work force needed to be included instead of only a few being accommodated in 'top' jobs (van Der Nest, 2003).

In response to the criticisms, the concept of BEE became prominent in the later half of the 1990s leading up to the early 2000s. During this period, BEE focussed on ownership changes. Some black people acquired equity in previously white-owned companies through 'fancy' BEE arrangements and Special Purpose Vehicles (SPVs) became common to deal with the problem of lack of capital by most black people (Butler, 2006c; Engdhal and Hauki, 2001). Some criticised this approach for lacking as much emphasis on wealth creation or new enterprises development as there was on ownership transfers (RSA, 2007a; Edigheji, 1999, Butler, 2006c). To date, BEE has been characterised as; enriching only the elite or politically well connected, failing to create enough jobs, promoting intra-black division, encouraging fronting and corruption and lacking implementation guidelines (RSA, 2007a; Butler, 2006a; b; IRIN, 2004; Voight, 2004; Iheduru, 2004). BEE also raises fundamental questions such as: at what point do individuals or groups cease to be disadvantaged by their ethnicity or race? Should there be a time frame for BEE or preferential policies? Do such policies undermine the self-esteem of the beneficiaries or reinforce negative stereotypes?

The so called minimalist or elitist approach to BEE had been too dependent on the goodwill of the historically empowered individuals and firms (Iheduru, 2004). Therefore, by 2001, the black business community called for a stronger government interventionist approach to drive the process (Butler, 2006c; Iheduru, 2004; BEECom, 2001). As a result, the concept of BEE has evolved in the light of experience since 1994 into B-BBEE, reflecting the political concerns that a narrow based approach does not benefit the majority of the population (RSA, 2007a; 2003; Butler, 2006c; Iheduru, 2004; van der Nest, 2003). Using its power as regulator, government continues to enact laws and other institutional frameworks to drive the B-BBEE process.

2.6.1 The B-BBEE Act and Codes of Good Practice

Under B-BBEE Act, the minister of trade and industry may issue codes of good practice on BEE (DTI, 2003). The Codes gazetted in February, 2007 provide a standard framework for the measurement of broad-based BEE compliance across all economic sectors (RSA, 2007a). Most significantly, B-BBEE is based on 7 key measurement criteria aimed at extending BEE benefits to a wider beneficiary base. According to Empowerdex (2006), the Codes demonstrate for the first time how BEE is tied to the economy, proving that BEE is not only vital for redistribution but is also a catalyst for growth. The seven key elements brought under one framework are indicated with their respective weighting and compliance targets in Table 2.2.

The generic score card is applicable to large firms with revenue in excess of R35m (as at 2007). For small enterprises with turnover of between R5m and R35m, BEE compliance is measured in any 4 of the 7 measurement criteria but, each measurement criteria is weighted at 25 points (RSA, 2007a). The total points scored on the score card provides a guide to the government and parastatals when making economic decisions about issuing licences and concessions, procurement (implementing preferential procurement policies), privatising state owned enterprises and entering into public private partnerships (RSA, 2007a).

Table 2.2 Generic BEE Balanced Score Card

Measurement Criteria	Weighting	Compliance Target
Ownership	20 points	25.1%
Management control	10 points	40% to 50%
Employment Equity	15 points	43% to 80%
Skills Development	15 points	3% of Payroll
Preferential Procurement	20 points	70%
Enterprise Development	15 points	3% (NPAT)
Socio-Economic Development ¹	5 points	1% (NPAT)
TOTAL	100 points	

¹ The 7th measurement criterion is also known as the residual factor and is industry specific. Compliance targets vary for sectors that have developed charters.

Source: (RSA, 2007a)

The higher the score, the better a contributor to BEE the firm is and the higher the chances of the firm winning the contract or whatever is under consideration. However, there is potentially a risk of enterprises structuring themselves in order to maximise their

scores, regardless of the operations and economic benefits and costs that these may have (Butler, 2006c).

Although voluntary, private companies are encouraged to apply the codes as they interact with each other since the preferential procurement component of the codes will affect most private companies throughout the supply chain (RSA, 2007a; Alexander, 2007). The government policies seek to influence the involvement of small businesses in the supply chain of the established firms. For example; in order for small firms i.e. with turnover below R5m not to be discriminated against by large firms who have to procure from BEE companies, they automatically qualify for level 4 BEE status (RSA, 2007a). This secures them a 100% BEE procurement recognition level Table 2.3 provides definitions of enterprises that qualify as BEE companies for procurement purposes.

The codes also give guidance in developing a sector transformation charter. A sector transformation charter constitutes a framework and establishes principles upon which BEE will be implemented in a particular sector (RSA, 2007a). Not all sectors are expected to develop charters but, those to whom government is a major client are encouraged to do so (Strydom, 2006). To date, a series of sector transformation charters such as the construction sector charter have been developed and others are in the process.

The construction sector charter was developed in 2006 and gazetted in February, 2007. It believes that positive and proactive response through the implementation of a Transformation Charter would address inequalities in the sector, unlock the sector's potential and enhance its growth (s.1.4). The following sections highlight that the Construction Sector Transformation Charter:

- i) Constitutes a shared approach reflecting targets that are visionary and contain significant stretch to facilitate the rapid transformation of the construction sector, which all sector stakeholders hold, and establishes the principles upon which BBBEE should be implemented in the sector (s. 1.6.1);
- ii) Establishes targets and qualitative responsibilities in respect of each principle (s. 1.6.2);
- iii) Lays the basis for the development of a Code of Good Practice for the construction sector, as envisioned in the BBBEE Act (s.1.6.3)

The key objective of the charter is to provide a framework for the construction sector to address BBBEE, enhance capacity and increase the productivity of the sector to meet world best practice. The charter also states that each enterprise will submit an independently audited report from an accredited verification agency annually to the sector Charter Council. The report, which will be publicly accessible, must contain the

enterprise's scorecard and an account of progress in achieving the qualitative undertakings outlined in this charter (s. 4.4).

The charter has set itself a number of targets to be achieved over a period of 4 and 7 years in the seven BEE elements namely: Ownership, Control, Employment Equity Skills Development, Procurement, Enterprise Development and Corporate Social Investment (CSI). The weightings of these elements and their set targets are not significantly different from those provided in the Generic balanced score card shown in Table 2.2. For example, regarding ownership which has the highest weighting of 25%, enterprises in the construction sector have committed themselves to achieving a 30% ownership target for black people and 10% for women within the next seven years (by Dec 2013). Procurement has the second highest weighting of 20% and enterprises in the sector commit to achieve a target of procurement from BBEE suppliers of 70% in the next seven years (by Dec 2013).

The charter states that the scorecard will for public sector related procurement, directly determine the preferred points obtained out of the potential 10 or 20 in the 90/10 or 80/20 in the preferential procurement evaluation. This is in accordance with the requirements of the preferential procurement regulations, 2001 pertaining to the PPPFA: no 5 of 2000 as amended. Once a charter is gazetted, it becomes binding on all companies within the particular sector when doing business with government.

Table 2.3 BEE Enterprise Definitions

Classification	Definition
Black-owned enterprise	It is a business that is 50.1% owned by black persons and where there is substantial management control', whereby ownership refers strictly to economic interest in the relevant business. 'Substantial management control', refers to membership of any board or similar governing body of that business.
Black-empowered enterprise	It is a business that is at least 25.1% owned by black persons and where there is substantial management control. Ownership also refers to economic interest but management in this case refers exclusively to executive directors.
Woman-owned enterprise	It is a business with at least 25.1% representation of women within the black equity and management portion.
Community or broad-based enterprise	It is a business which has an empowerment shareholder that represents a broad base of members such as a local community where the benefits support a target group, for example black women, people living with disabilities, the youth and workers.
Co-operative or collective enterprise	It is an autonomous association of persons who voluntarily join together to meet their economic, social and cultural needs and aspirations through the formation of a jointly owned enterprise and democratically controlled enterprise.

Source (RSA, 2003).

However, the Codes will only take full effect in 2008 as the government has given a 1 year transition period to allow for conversion from narrow-based to broad-based BEE implementation approach (RSA, 2007a). At present, there is a lot of speculation. For example, some point out that the Codes are too intrusive and place a heavy regulatory burden on business (Butler, 2006c). Similarly, while the process of developing the construction charter begun around 2005; the charter was only gazetted in 2007 (after the researcher had completed data collection). Despite not having discussed the codes and construction sector charter in greater detail in the literature chapter, they were raised during field work as reported in chapter five as they are significant factors in public procurement.

2.6.2 Significance of Public Procurement to BEE Objectives

In short, the government is focussing its preferential procurement on the development of BEE. By law, the public sector is required to follow specific codes of practice in channelling their preferential procurement towards black-owned and black-empowered companies (Strydom, 2006). The potential for procurement to 'spread' BEE compliance lies in its multiplier effect along the supply chain (Empowerdex, 2006). By ensuring that the supply chain shifts to include empowered enterprises, a multiplier effect can boost empowerment throughout the economy. The implication of this is that if all companies are 'forced' to implement B-BBEE, they will encourage transformation of their suppliers (Empowerdex, 2006).

The evolving BEE policy has had a major impact on the role of public procurement since 1994 (RSA, 1997). The post-1994 government saw the need to reform public procurement in order to promote efficiency in public sector procurement as well as ensure a more equitable redistribution of public sector opportunities (Gounden, 2000). The review by the procurement task team initiated in 1995 revealed that 95% of state contracts awarded during the five years preceding 1994 were to (large) white-owned and controlled enterprises (Gounden, 2000). This reflected the minimal participation of SMMEs, particularly those owned and controlled by previously disadvantaged individuals as a result of various underpinning apartheid legislations (RSA, 1997).

Therefore, the importance of public procurement was that it would encourage the participation of disadvantaged groups for redistributive purposes and enabling more people to participate in economic activities would contribute to economic growth (RSA, 1997). Government identified enhancing job creation, income generation and development of SMMEs as three specific socio-economic objectives that could be achieved through leveraging its large purchasing power (RSA, 1997; RSA, 1995a).

Following this, a public sector procurement plan was developed in 1994 as a starting point for procurement reform (RSA, 1995b). The purpose was to provide a series of interim strategies aimed at increasing the participation of previously disadvantaged enterprises in public sector procurement (RSA, 1995b). This strategy was aimed at preventing the perpetuation of inequitable award of government contracts after 1994 while new policy was being developed (Gounden, 2000). The 10-point plan was incorporated in targeted procurement developed in 1996 as a key instrument in addressing inequalities in various sectors of the economy. The principle of using public procurement to encourage the participation of previously disadvantaged groups in public contracts was embraced by the (1996) constitution.

2.6.3 The Constitutional Basis of Procurement

Section 217 (1) of the RSA constitution lays a basis for a procurement system that is fair, equitable, transparent, competitive and cost effective i.e. meets the primary goal. Section 217(2) allows for organs of the state to implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination. The second provision relates to the secondary goal of achieving socio-economic objectives. Section 217 (3) stipulates that national legislation must prescribe a framework within which the policy of preferential procurement may be implemented. Before enacting the legislation to effect these provisions, government released a Green paper on public sector procurement reform in 1997.

2.6.4 Green Paper on Public Sector Procurement

The 1997 Green Paper on public sector procurement highlighted the major impact that public sector procurement has on the RSA African economy, through both consumption and investment spending. It expressed government's intention of using public sector procurement to realise broader development goals (RSA, 1997). In the paper, the government also indicated the need to develop an effective and efficient procurement system in order to deliver the quality and quantity of services required in accordance with RDP principles (RSA, 1997). The fundamental provisions of the Green Paper were as follows:

- i achieving good governance in procurement; and
- ii achieving the government's socio-economic objectives.

As part of the justification, the green paper states that, "...as long as business continues to develop along racial lines and to operate parallel to each other, South Africa cannot

develop to its full potential and will not compete internationally as a nation” (RSA, 1997:42). It is likely that government would have to bear additional costs associated with preferential procurement. However, the Green Paper views this premium as “a subsidy towards moving from the dual economy to a single economy and the alternative larger cost associated with the inefficiency of maintaining a dual economy” (World Bank, 2003:21). In other words, there is a cost, but the cost, it is hoped will be outweighed by the benefits in the long term. Some authors have argued that the financial premium may not be as high as is feared, with one study indicating 0.67% and another 0.8% (Gounden, 2000; Watermeyer and Govender, 2001).

For some unknown reason(s), the recommendations of the Green Paper on public procurement were not developed into a final White Paper which would have formally prescribed government procurement policy (World Bank, 2003). As a result of the lack of formalisation or ‘reformed’ legal and institutional framework, the recommendations of the Green Paper were not implemented in a comprehensive and coherent manner (World Bank, 2003). The resulting policy fragmentation and non-uniform implementation coupled with the contested nature of preferential procurement seems to reflect the *ad hoc* development of practice in the construction industry. In response to this *ad hoc* implementation, the Preferential Procurement Policy Framework (PPPF) Act 2000 was passed.

2.6.5 The Preferential Procurement Policy Framework Act 2000

The purpose of the PPPF Act 2000 is to provide a framework for establishing how preferential procurement policy should be implemented in RSA as provided for in the constitution. The PPPF Act 2000 provides only a framework.

Table 2.4 Organs of the State Implementing Preferential Procurement

No.	Classes of Organs of the State
1	<ul style="list-style-type: none"> National and provincial departments as defined in the Public Finance Management Act.
2	<ul style="list-style-type: none"> A municipality as contemplated in the Constitution.
3	<ul style="list-style-type: none"> A constitutional institution defined in the Public Finance Management Act.
4	<ul style="list-style-type: none"> Parliament.
5	<ul style="list-style-type: none"> A provincial legislature.
6	<ul style="list-style-type: none"> Any other institution or category of institution defined as an “organ of state” in section 239 of the Constitution and recognized by the Minister by notice in the Government Gazette as an institution to which the Act applies.

Source: PPPF Act, 2000, (RSA, 2000a).

By law, each organ of state is required to determine its own preferential procurement policy and implement it within the framework that provides a point-scoring system and specific goals (RSA, 2000a). The specific goals usually relate to gender, race disability and locality. The PPPF Act 2000 applies to all organs of the state presented in table 2.4.

The PPPF Act, 2000 is currently under review to bring it in line with the B-BBEE Act 2003 and the Codes. The B-BBEE Act 2003 expands the framework provided by PPPF Act, 2000 which is a narrow-based.

2.6.6 Preferential Procurement in the Construction Industry

In the construction industry, preferential procurement policies are being implemented through targeted procurement. Targeted procurement refers to the unbundling, unpacking or breaking-out procurement strategies aimed at providing opportunities for the participation of targeted enterprises and labour from historically disadvantaged backgrounds (Wilcock, 2005; Watermeyer *et al.*, 1998). Thus the targeting of 'who ought to benefit' from public procurement is brought into the procurement process (Watermeyer, 2000). McCrudden, (2004) observes that the principles of targeted procurement are quite similar to the preferential procurement policies adopted by Malaysia in favour of the Bumiputra.

Resource Specification

Prior to the introduction of preferential procurement, contractors, suppliers and service providers were normally required to adhere only to technical specifications (Gounden, 1997). Technical specifications are used to define the product and to set out the acceptance criteria relating thereto (Watermeyer, 2000). Since 1996, targeted procurement has brought in an additional requirement in the execution of contracts namely; the human resource specifications.

Resource specifications define and set out goals for targeted SMME participation in the performance of a contract (RSA, 1998b). Specifically, they stipulate how contractors can meet these goals in order to comply with the requirements of a particular contract and the measures to be taken by the client to enforce or penalise non-compliance. Contract participation goals for projects represent the value of goods and services which a firm contracts to engage historically disadvantaged enterprises (HDEs) in the performance of a contract (RSA, 1998b). Resource specifications provide the framework with which the main contractor can structure and organise his/her resources in the performance of a contract (Watermeyer, *et al*, 1998).

Models for Participation in Public Procurement

Participation in public procurement by people from historically disadvantaged backgrounds is through targeted enterprises and targeted labour (Watermeyer, 2003a; 2000). Most historically disadvantaged enterprises can participate directly on relatively smaller contracts as main contractor or indirectly in a number of ways (RSA, 1998b). These are captured in Figure 2.1.

Sometimes, procurement entities have incentives to combine requirements into large contracts in order to reduce transaction costs (Morand, 2003). However, contract bundling is at odds with a limitation of small business participation which can compete more effectively for small contracts (Morand, 2003). Therefore, in cases where the procurement entity puts to tender a large contract, the onus of unbundling the contract shifts to the main contractor in order to enable the participation of small historically disadvantaged firms. This approach assumes that at an operational level, the main contractor must unpack the contract into smaller packages to be able to procure the services of small businesses and execute the contract. It also implies that the main contractor ought to change the work methods, for example, lower reliance on capital and increased reliance on labour-intensive methods to create more job opportunities (Watermeyer *et al.*, 1998). The implications of contract unbundling are further discussed in chapter three.

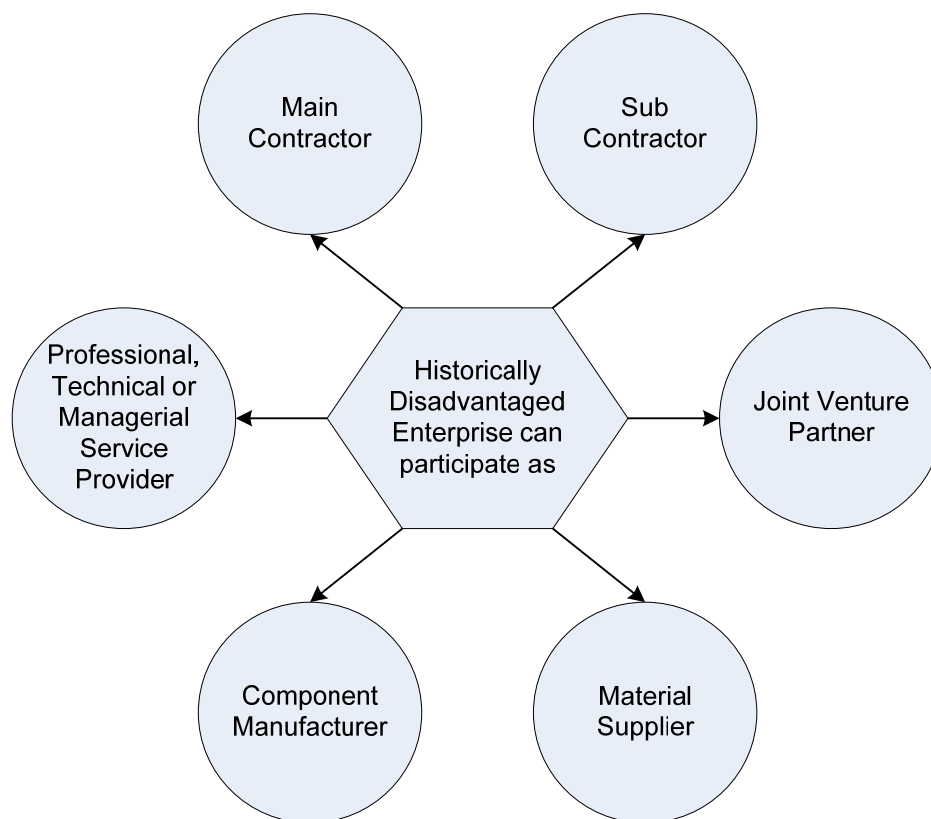


Figure 2.1 Models for Participation in Public Procurement

The Points Scoring System

Clearly, the procurement environment is changing. In this changing environment, tenders are currently being awarded on a points-scoring system weighted between the price mechanism and development objectives (RSA, 1998b). With this system, public sector clients award 80/90 points for financial price and 20/10 for socio-economic development goals respectively during the tender adjudication process (RSA, 2000a).

Based on the principles of the PPPF Act, 2000, the 20/80 and 90/10 points system applies depending on the estimated value of the contract. For large contracts, the 90/10 applies whereas for small contracts in which the SMMEs are encouraged to participate as the main contractor; the 80/20 system is used. The 80 and 90 points are awarded for price and the 20 and 10 are awarded for socio-economic development goals respectively. To get the final score, the points scored under socio-economic development goals are added to those scored in the financial price. The formula used to calculate the points for price can be illustrated as follows:

$$P_s = X [1 - (R_t - R_{\min}/R_{\min})]$$

where:

P_s = Points scored for price of the tender being adjudicated.

X = Applicable maximum points that can be obtained, i.e. 90 or 80
respectively depending on the value of the contract.

R_t = Rand value of the tender being adjudicated (estimate).

R_{\min} = Rand value of the contractor's tender price submitted.

For example, if an estimated value of a tender is R 3,047,734.00 and a contractor submits a tender price of R2,970,000.00, the financial points would be calculated as follows:

$$P_s = 90[1 - (3,047,734.00 - (2,970,000.00/2,970,000.00))]$$

$$= 87.6 \text{ points}$$

The points scored from the socio-economic component are added to the 87.6 points scored in the financial price part to get the final score. The tenderer/contractor scoring the highest total points is usually though not necessarily awarded the contract. The points scoring system is illustrated by Figure 2.2

The use of the points-scoring system ensures that the socio-economic aspect is a relevant criterion in the award of contracts in public procurement. However, Watemeyer (2000) cautions that the socio-economic aspect must be balanced against other criteria such as

quality and price to ensure social benefits are obtained within the minimum possible costs to government.

McCrudden (1995) posits that the use of public sector procurement to achieve socio-economic ends also exhibits a 'politically symbolic character' in that the award of a public sector contract is no longer viewed simply as an economic activity due to the social criteria introduced by the 'non-neutral' client. Here, government uses its legislative and economic powers to promote certain socially desirable objectives or dissociate itself from undesirable practices (McCrudden, 1995). To this end, the RSA government has made it clear that it will leverage its procurement policies to actively promote BEE.

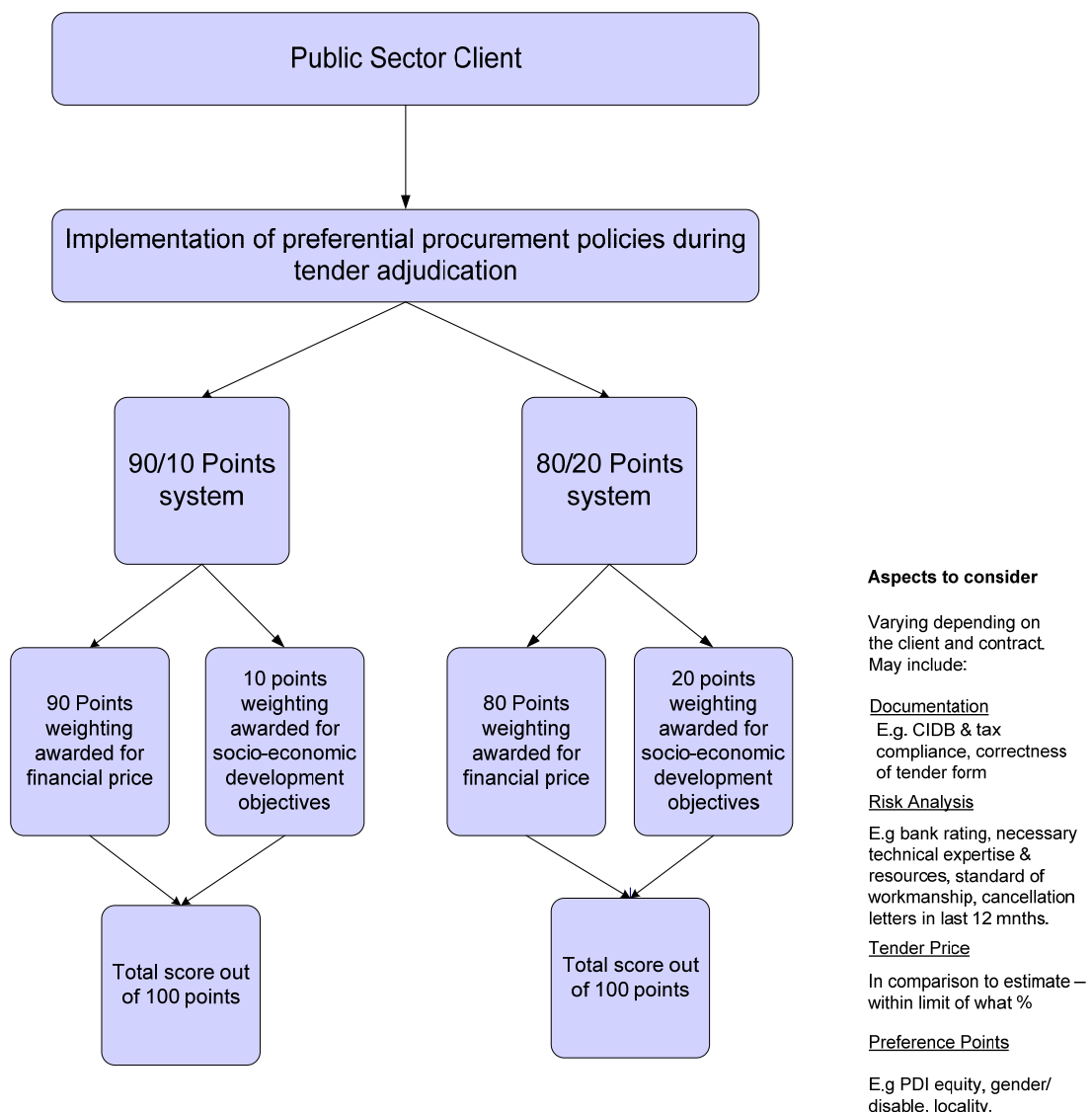


Figure 2.2 The 90/10 and 80/20 Points Scoring System

However, recent work has indicated that preferential procurement is currently inconsistently applied by different client bodies, some of whom operate outside the confines of the PPPF Act, 2000 (CIDB *et al.*, 2005; Watermeyer, 2003a). It is also

reported that the lack of uniformity in procurement documentation and procedure make the tendering requirements difficult to understand, increases tendering costs, exposes parties to unnecessary risks, delays the evaluation and awarding of tenders and inhibits the participation of the emerging sector in the construction industry (CIDB *et al.*, 2005; World Bank, 2003).

2.7 CONSTRUCTION INDUSTRY DEVELOPMENT

According to RSA (1999), the RSA construction industry has experienced volatility and decline in demand for the past 2 decades up to 1999. Other constraints have included; inadequate skills and capacity, inherent outmoded delivery system, declining performance and value and a racially skewed ownership and participatory profile (RSA, 1999). As a result, the industry consists of both the established and emerging sectors, which presents unique challenges of narrowing the gap and raising overall performance (CIDB, 2004).

To give direction to the development of the construction industry, the Construction Industry development Board (CIDB) was established under the CIDB Act, 2000 (RSA, 2000b). The CIDB aims to provide strategic leadership to the industry, stimulate growth as well as reform and improve the role of the construction industry in the national economy (CIDB, 2004). CIDB focuses on achieving the following:

- i sustained growth, capability and empowerment;
- ii improved industry performance and best practice;
- iii a transformed delivery environment underpinned by consistent and ethical procurement practice; and
- iv enhanced value to clients and society (CIDB, 2004).

One of the significant tasks for the CIDB has been the development of the contractors register.

2.7.1 Relevance of Contractor Registration and Grading

As a means for monitoring and regulating the performance of the industry and its stakeholders, CIDB contractor registration became a mandatory requirement in 2004 for all firms that wish to participate in public sector contracts. As part of the registration, the CIDB grades contractors according to work type such as civil engineering (CE), electrical engineering (EE), mechanical engineering (ME), general building works (GB) and various specialist work (SW) classes (CIDB, 2007).

The CIDB grades/designations run from 1 to 9. Each grade represents a maximum contract amount that a contractor registered in the particular designation is eligible to tender for as indicated in columns 1 and 2 of Table 2.5.

Table 2.5 CIDB Contractor Grading

Designation	Maximum Value of a Contract that a Contractor is considered capable of performing (R)	Minimum Ave Annual Turnover (AAT) (R)	At least 1 Project with a Value greater than (R)	Employable Capital	
				Year 1	Year 2
				Column A (R)	Column B (R)
1	200,000	No Requirement	No Requirement	No Requirement	No Requirement
2	500,000	No Requirement	80,000	50,000	50,000
3	1,500,000	750,000	260,000	150,000	250,000
4	3,000,000	1,500,000	800,000	300,000	500,000
5	5,000,000	2,500,000	1,600,000	500,000	850,000
6	10,000,000	6,000,000	3,000,000	1,500,000	2,500,000
7	30,000,000	18,000,000	8,000,000	4,500,000	7,000,000
8	100,000,000	70,000,000	26,000,000	18,000,000	29,000,000
9	99,999,999,999	210,000,000	80,000,000	54,000,000	90,000,000

Source: CIDB, 2007.

There is a limit to the size of contracts that contractors in specific grades can tender for except for grade 9 which is practically unlimited. Because of the nature of the industry, there are few firms within this grade, typically national and international enterprises. On the other extreme end of the scale is the 1GB which is the entry level and where most contractors, especially historically disadvantaged, are found. Between these two extremes are a variety of firms, old and new alike.

The CIDB register has about 30, 000 registered contractors nationwide, of which about 23, 000 are active (CIDB, 2007). About 1 200 contractors have been upgraded of which 85% are black-owned enterprises (CIDB, 2007). Appendix 2 shows the current status of contractor register, black-owned contractors by grade, black-owned by class of work and women-owned by Grade. The CIDB also currently has a guideline on the combinations of grades held by joint venture (JV) partners which are deemed to satisfy the requirements for tendering in relevant grades. The CIDB JV grading guideline (Appendix 3) can be seen

as a way of reducing the unequal power between contractors and avoiding contractors jumping grades.

Essentially, CIDB grading means that a contractor is not eligible to tender for contracts in grades higher than the one(s) they are registered in. The registration and grading of contractors acts as a pre-qualification of contractors or a two-stage tender process which helps assess and “certify” the capability of contractors to handle contracts of up to a certain value. This pre-qualification of contractors is intended to reduce risk and tendering and evaluation costs, streamline public procurement and create a framework that supports sustainable growth and empowerment (CIDB *et al.*, 2005). By categorising contractors, it is also hoped that the registers will enable clients to structure their contracting and development strategies accordingly (CIDB *et al.*, 2005). In grading contractors, the CIDB assesses the applicant’s financial and work capabilities. The information required to determine these include 5 criteria as shown in Figure 2.3.

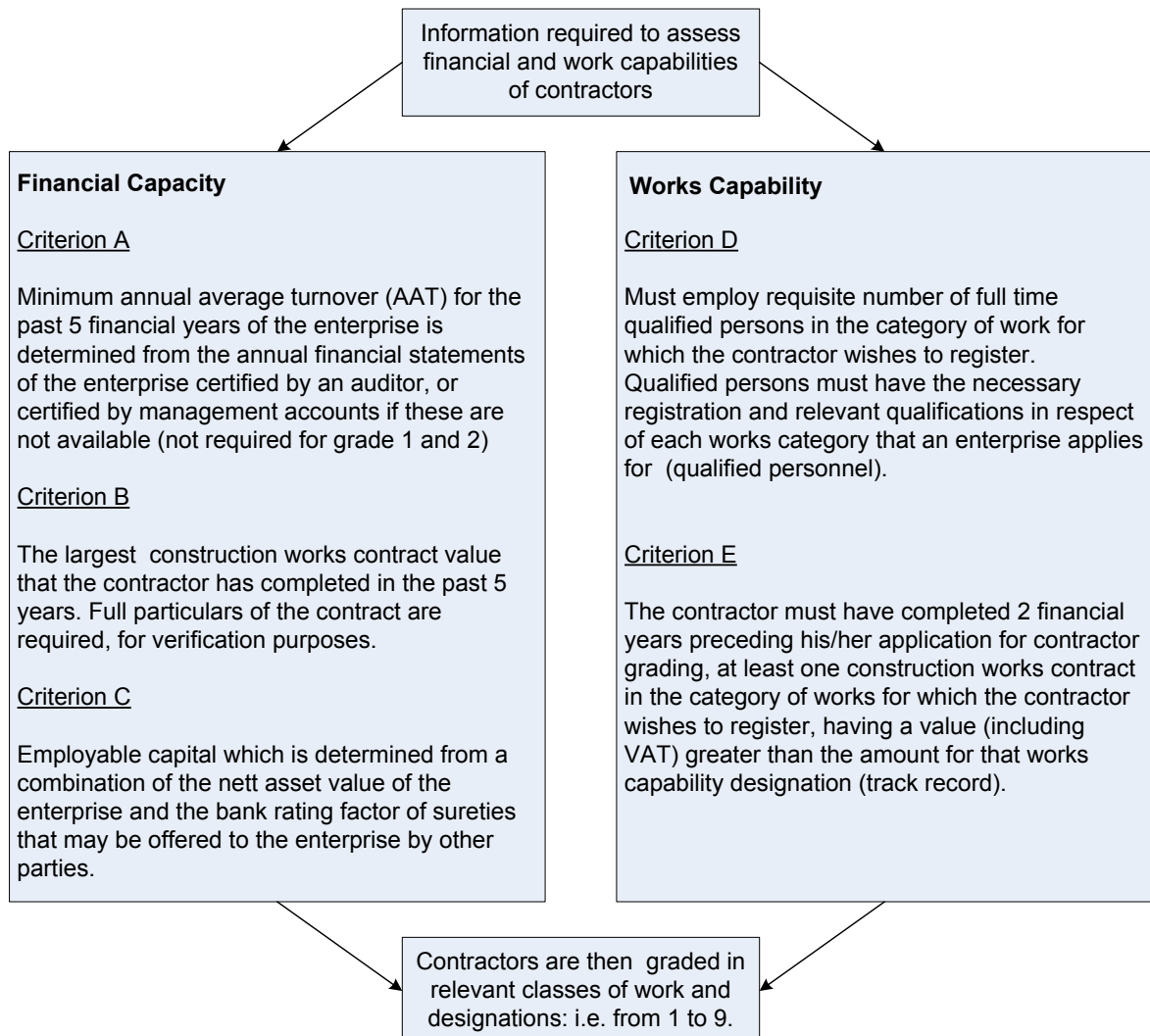


Figure 2.3 Information Required for Assessing Contractors’ Grading

From the CIDB's perspective, the specific benefits of contractor registration and subsequent grading include the following;

- i Qualifies the contractor to tender for public sector work;
- ii Promotes contractor development and sustainability;
- iii Builds a contractor track record with a reputable institution;
- iv Reduces tendering costs to clients and contractors; and
- v Provides clients with an opportunity to identify potentially emerging contractors and target development support (CIDB, 2007).

From Table 2.5, it can be seen that the barriers to entry at the first level are quite low which makes this particular sector highly competitive and unprofitable (CIDB, 2004; CSIR, 2003). As a result, there appears to be an oversupply of small and micro businesses and excessive competition (CIDB, 2004). In partnership with other stakeholders such as the DPW, the CIDB has been instrumental in developing initiatives aimed primarily at developing emerging contractors. Three such key interventions are discussed below.

2.7.2 Emerging Contractor Development Programme (ECDP)

The ECDP is directed at encouraging the emergence of small and emerging enterprises in the construction industry. Since 1994, the government has put in place several measures aimed at increasing the participation of small businesses in the economy. Various authors have discussed the advantages of actively promoting small businesses. These include their potential as vehicles for; the creation and intended redistribution of wealth, innovative expansion of business opportunities and markets, poverty alleviation and employment generation (Thwala, 2005; Mbachu and Folose, 2005; van der Nest, 2004; Morand, 2003; Fee *et al.*, 2002; Chinock and Collinson, 1999; Gounden, 1997; RSA, 1995b). Thus the construction industry, with a structure characterised by a preponderance of small firms is suited to the policy of promoting and developing SMMEs in RSA (Kajimo-Shakantu and Root, 2006).

However, there are a number of constraints to achieving the potential of SMMEs including (Fee *et al.*, 2002; CMC, 2000; Ofori, 1995; RSA, 1995b):

- i Marketing problems (e.g. identifying new sources of demand, finding clients, and developing business linkages);
- ii Legal and regulatory environment (e.g. problems of compliance and harassment);
- iii Financial problems (e.g. limited access to capital markets); and

- iv Human resource and management problems (e.g. lack of skills and managerial expertise).

In light of the above, one of government's policy documents opines that these constraints cannot be resolved through normal market forces and private sector action (RSA, 1995b). Rather, the government claims that targeted and proactive assistance need to be given to SMMEs to overcome the obstacles that hinder them from reaching their full potential (RSA, 1995b).

As such, the ECDP is intended to provide direct and comprehensive support to small scale and emerging construction enterprises. It is targeted at generating new industry capacity and transforming (CIDB, 2004; Govender and Watermeyer, 2001). ECDP comprises a number of contractor learnership programmes such as Sakhasonke (CIDB *et al.*, 2005).

2.7.3 DPW Contractor Incubator Programme

The DPW established a Contractor Incubator Programme in 2004 which aims at promoting sustainable development of small to medium-sized contractors that can demonstrate the potential to perform contracts in the R1 million to R30 million range (CIDB *et al.*, 2005). The programme provides mentorship, training and support to contracting enterprises particularly those owned and controlled by historically disadvantaged individuals. The purpose of the incubator programme is to create an enabling environment within which selected existing contracting enterprises can develop into sustainable contracting enterprises. Another intervention used by government to promote socio-economic objectives is the expanded public works programme (EPWP).

2.7.4 The Expanded Public Works Programme

The EPWP, introduced in 2004, is a major second economy supply-side intervention aimed primarily at addressing the high levels of unemployment in the country. The EPWP is targeted mainly at the creation of work opportunities particularly using unskilled labour on projects. The intention is to direct government grants towards labour-intensive activities where a significant number of unemployed people can be drawn into productive work, gain skills on the job and increase their capacity to earn an income. The goal of EPWP is to create work opportunities coupled with training for a minimum of one million people, at least 40% women, 30% youth and 2% disabled between 2004 and 2009 (EPWP, 2006; 2003).

Since its inception in April 2004 to March 2006, EPWP has created about 348 900 work opportunities (EPWP, 2006). As part of ASIGSA now, the EPWP is expected to expand

its original targets and scope of projects (DTI, 2006b). It is expected that about 63 000 more people will be employed to maintain roads and another 100 000 people will be given opportunities in jobs averaging six months in roads-building and training (DTI, 2006b). Some R15 billion is ear-marked for the EPWP for the next 5 years (DTI, 2006b).

Most of the people on EPWP are employed as labourers by contractors who also employ supervisory staff and sometimes depending on the type of work, skilled artisans (EPWP, 2006). The EPWP has a contractor learnership programme called *Vuk'uphile*, supported by a number of stakeholders, which is aimed at developing trained and experienced contractors and supervisors who can respond to the increased demand from provinces and municipalities for labour-intensive services (EPWP, 2006). Within the anticipated wider scope of the EPWP, 1000 more small black contractors will be developed (DTI, 2006). However, despite the potential benefits, there are indications of some resistance to the use of more labour-intensive methods in the creation of infrastructure (DTI, 2006).

The above discussion has been shown that the South African government is taking proactive measures to redistribute resources by providing opportunities to previously disadvantaged enterprises to enable them participate in formal economic activities. As the dominant client of the construction industry, the government is well positioned to influence both the demand and supply sides of the construction industry. Its influence is reflected mainly by the enactment of BEE legislation and the implementation of preferential procurement policies.

2.8 THEORIES FOR UNDERSTANDING PREFERENTIAL PROCUREMENT

By using public procurement through preferential procurement policies, government's intention is to influence change in behaviour of industry participants in furtherance of BEE. There are opposing views regarding government interventions targeted at the emerging sector or previously disadvantaged enterprises. One view is that such interventions have the potential to polarise the industry further along racial lines (Rwelamila *et al.*, 1997). The other is that the interventions have the potential to reconcile the established and emerging sectors into a 'unified' construction industry (Gounden, 2000).

An empirical study conducted by Gounden (2000) found that through preferential procurement, joint ventures and subcontracting have beneficial effects in terms of providing means of transferring skills and expertise when properly structured. The study found an increase in joint venture formations and formalisation of subcontracting. To contrast, other reports such as CIDB (2004) and CSIR (2003) indicate problems of a lack of established relationships in joint ventures which negate the transfer and consolidation of skills and incidences of abuse of sub-contractor by the main contractor. Muller (2006) in

an empirical study found, in part that the BEE partners in joint ventures were often passive, contributing and gaining little from the project. These findings support the view of Ofori (1991) that joint ventures do not often result in effective transfer of expertise particularly where they are not voluntary.

Research such as the ones highlighted has provided relevant information on different aspects of preferential procurement policies. However, how different construction firms perceive and respond to preferential procurement in practice in terms of their strategies and practices in RSA remain largely poorly established. To investigate this phenomenon further and gain better insight, it is vital to first establish whether there are any generally accepted theories emerging from the literature that can be used to re-conceptualise the problem and theorise about it.

From the citations in this chapter, it can be seen that much of the work on affirmative action has been from either a sociological (e.g. Crosby *et al.*, 2006; Iyer *et al.*, 2003; Sidanius *et al.*, 1996) or economic/econometric perspective (e.g. Fryer and Loury, 2007; 2005; Blumkin *et al.*, 2005; Coate and Loury, 1993; Lundberg, 1991). The bulk of the literature in the public domain on affirmative action or preferential policies is on employment, i.e. labour markets and education. Of the studies which have been reviewed in this thesis, most of them have not used any explicit theories or theoretical frameworks.

In economics, where the research has focussed on determining the importance of affirmative action in explaining the black-white earning ratios since the 1960s, the theory of discrimination/stereotype in job assignment or wages stands out (Coate and Loury, 1993). For example, Lundberg (1991) examined the enforcement of equal opportunity laws in a labour market that exhibits statistical discrimination i.e. discrimination based on imperfect or differential information about individual productivity and their characteristics of two groups of employees. Using a mathematical model, the study concluded that in an economy with statistical discrimination, employers will have an incentive to evade equal opportunity laws, especially where variables which may serve as proxies for sex and race can be used. Coate and Loury (1993) proposed a job-assessment model to examine how affirmative action policies impact on employers' belief about the capabilities of minority workers. The study yielded mixed results i.e. in some cases, affirmative action can eliminate negative stereotypes and in others, it can reinforce them. The theoretical significance of the mixed results is that they give credence to the views of both opponents and proponents of affirmative action (Coate and Loury, 1993).

The focus of the reviewed economics based affirmative action literature is different from the current research which is mainly qualitative and aimed at investigating the strategies

that construction firms use to respond to preferential procurement policies in the award of contracts. Therefore, notwithstanding their contribution to the general subject of affirmative action, the theoretical frameworks used in economics are not appropriate for theorising about the current research.

Literature from sociology shows some fragmented theories being used in studies such as the inter-group conflict theory (advocated by e.g. Bobo, 1998) and social dominance theory (advocated by e.g. Sidanius *et al.*, 1996). The focus of the studies in sociology has been on determining individual attitudes to affirmative action. The theories proposed in sociology based literature reviewed in the current research have been criticised by some for being narrow focussed, claiming that attitudes towards affirmative action should not be explained solely in terms of one theory or approach (Crosby *et al.*, 2006; Iyer, 2003). In spite of the criticisms, this research found the theory of inter-group conflict to be useful based on the historical socio-inequalities of RSA and the contentious nature of preferential procurement policies. The inter-group conflict theory promotes the view that battles over affirmative action reflect the conflicts of interests of different social groups.

Nonetheless, the research recognises that a narrow view of ethnic competition over resources is inappropriate considering that political, social, economic and demographic factors are constantly evolving. As a result, there is need to identify other theories to complement the theory of conflict for purposes of investigating the complex phenomenon of preferential procurement. However, none of the studies reviewed in this thesis on preferential policies in procurement in the construction industry, or from a construction management perspective (e.g. Muller, 2006; Sweetwell, 2006; Rogerson, 2004; Manchidi and Hammond, 2000; Gounden, 2000) provide or suggest any theories that could be used to form a theoretical framework for empirical research. Based on this finding, this thesis contends that there is no single theory established in literature that governs preferential procurement in practice in the construction industry. This also suggests that there is no comprehensive theory or strong theoretical basis for hypothesis formulation. This finding has two interlinked implications for research.

Firstly, there is a need to establish a theoretical/analytical framework to provide a foundation for the study and build a framework for interpretation and analysis (O'Callaghan 1996). Secondly, as no strong or generally acceptable theoretical framework has been revealed, a grounded theory methodology is required (Remenyi *et al.*, 1998). The conceptualisation of the research process is illustrated in Figure 2.4

Theory has many meanings including; abstract reasoning, series of inter-related concepts, explanation, aid to comprehension and component of a body of knowledge (Remenyi and

Money, 2004). For Strauss and Corbin (1998:15), a theory is “a set of well developed concepts related through statements of relationships which together constitute an integrated framework that can be used to explain or predict phenomena”.

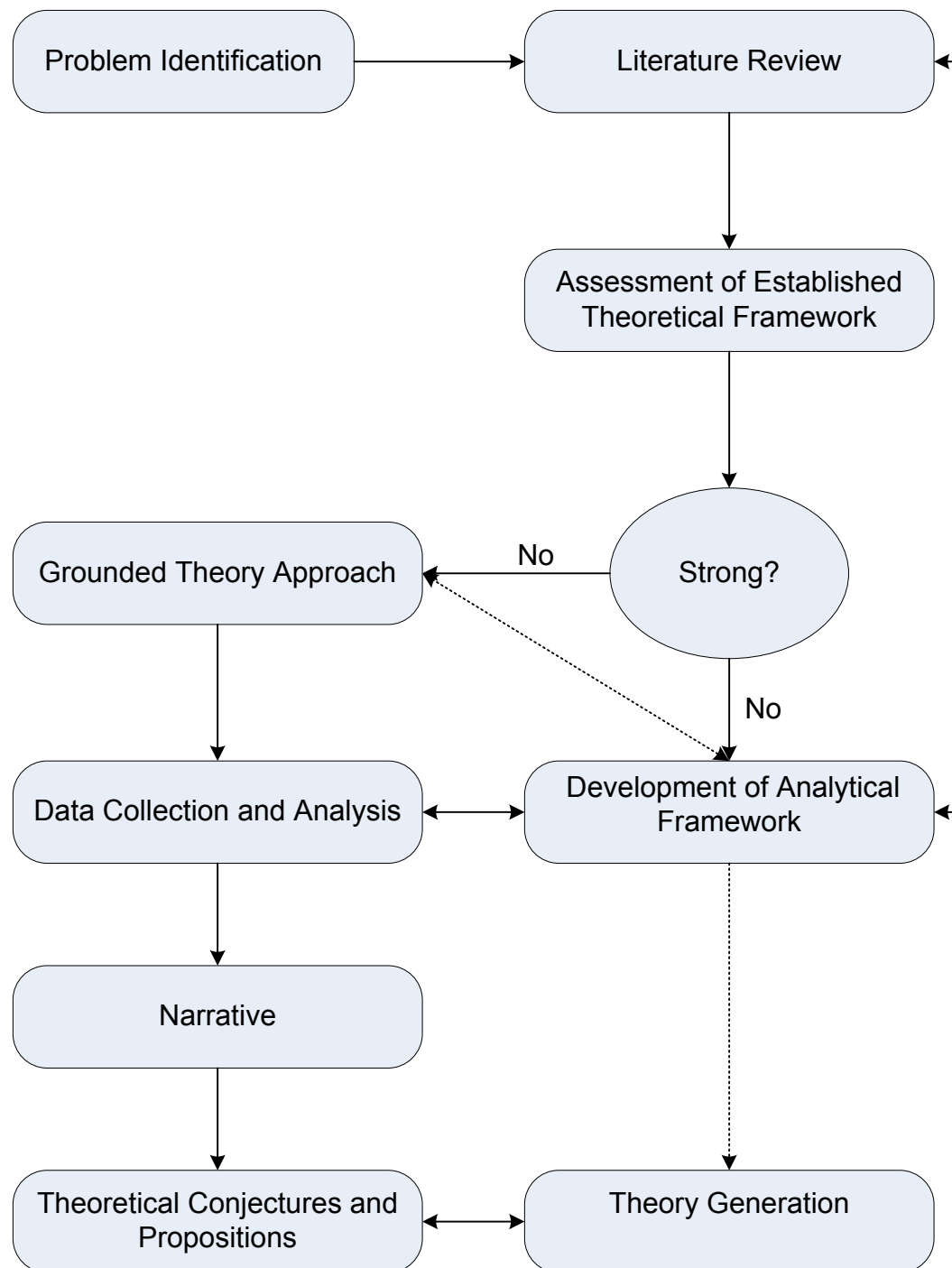


Figure 2.4 Conceptualisation of the Research Process

Remenyi and Money (2004:300) contend that theory is “often, simply the best explanation which is available at that time”. Consequently, many theories are only partial explanations of the phenomena because the full complexity of a situation may not often be apparent

when theory is being developed (Remenyi and Money, 2004). It appears there are three approaches to theory development namely; i) application of theory from one discipline or field to another ii) creation of new theory and iii) suggestions of ways in which additional concepts can be incorporated into existing theories (Moore, 2006).

In agreement with the argument of Remenyi and Money (2004), it is too ambitious to assume or expect that research at this level (Doctoral) should create “new” theory, i.e. grand theory (Strauss and Corbin, 1998). Rather, this research makes a contribution to knowledge through substantive or low-level theory generated through the application of a hybrid of approaches i) and iii).

2.9 CONCLUDING REMARKS

This chapter set out to establish how the government has sought to harness the potential of public procurement as a medium for delivering socio-economic objectives in the construction industry. A secondary objective was to establish whether a coherent generic theoretical framework that guides preferential procurement policies in practice could be identified.

From the literature, it is evident that the practice of giving preference to one group such as local contracting firms vis-à-vis foreign firms is a widespread phenomenon. However, it appears as though when the criteria for giving preference are race, ethnicity or gender, then affirmative action could be present explicitly or otherwise. Affirmative action is not a single policy but, a set of policies, strategies and procedures that often have the tendency to subsume other government intervention programmes. Preferential or affirmative action policies continue to be a grey area in terms of the lack of a universal, coherent definition and disagreements about the justifications and implementation thereof. For example, Malaysia ended its affirmative action policy of NEP in 1991 yet, preferences in government procurement continue to be given to the Bumiputra i.e. on basis of ethnicity, to date. The experiences of preferential procurement policies in the various studies reviewed provided mixed results. The chapter also highlighted that a growing economy is essential for providing additional resources to be redistributed to address socio-economic inequalities.

In summary, contents of this chapter confirm that although preferential procurement has many benefits and the construction industry is well suited as a vehicle for pursuing socio-economic objectives, preferential procurement remains a contested concept. This partly explains the *ad hoc* development of practice in the RSA construction industry. The chapter concludes that no coherent theoretical framework guiding the practice of preferential procurement is identifiable in literature. This assertion has theoretical and methodological

implications for the research. As no coherent generic framework has been established, the next chapter develops an analytical framework for purposes of exploring the research problem both conceptually and empirically.

CHAPTER 3: DEVELOPMENT OF A TRIADIC ANALYTICAL FRAMEWORK

3.0 INTRODUCTION

In chapter 2, the significance and potential of public procurement as a vehicle for achieving socio-economic objectives including its wide-spread use was discussed. The review of previous studies failed to identify any coherent generic theoretical framework that guides preferential procurement policy in practice. Rather, it established that in the literature the concept of preferential procurement is contested by different and often incompatible theoretical economic and moral assumptions. Therefore, the purpose of this chapter is to develop an analytical framework for a thorough examination of the research problem both conceptually and empirically.

The purpose of the framework proposed in this chapter is to provide for rigorous data interrogation and a perspective from which to build theory using grounded theory approach. As such, it is not intended to merely test the applicability of existing theories. The chapter justifies the multi-disciplinary approach taken, describes the components of the framework and re-establishes the research questions to be investigated in an empirical field study.

3.1 JUSTIFICATION FOR A MULTI-DISCIPLINARY APPROACH

The subject of preferential procurement policy falls within the broad area of public policy which itself suffers from a lack of unified theory or explicit theoretical framework through which to view research problems (Ostrom *et al.*, 1993). According to Ostrom (1999) public procurement is broad-based and requires interdisciplinary skills and knowledge to understand it better. While grounded in equitable redistribution, preferential procurement policies in RSA are also driven by economic motivations. Therefore, to gain better insight and to contribute to theory development, the analytical framework proposed adopts a multidisciplinary approach.

A multi-disciplinary approach enables the research problem identified in construction management to be explored at both the micro and macro levels. As Coffey and Atkinson (1996:13) argue, "there is much gained from trying out different analytical angles ... new insights can be generated and one can sometimes escape from analytical perspectives that have become stereotyped and stale". As such, the adoption of a triadic analytical framework is justified on the basis that it provides multiple perspectives for thinking about the constraints, responses, consequences and implications of preferential procurement policies in the construction industry. Diverse perspectives are useful in interpreting findings and building theory and in so doing help to strengthen the rigour of the research (Strauss and Corbin, 1998). The multiple analytical framework proposed is consistent with

the ontological, epistemological and methodological orientations adopted for the study, which in the main encourage the researcher to seek alternative explanations. In particular, grounded theory discussed in chapter 4 encourages researchers to explore research questions from different angles in a multi-faceted manner, enabling more than one dimension of a phenomenon to be grasped (Strauss and Corbin. 1998). In line with this, the triadic framework developed provides multiple perspectives from which to interpret the data and build the theory rather than a single one, making it compatible with the chosen methodology.

3.2 POSITIONING THE ANALYTICAL FRAMEWORK

The literature established that the subject of preferential procurement is multi-faceted and complex. The research identified three significant areas related to the research problem that require further exploration. These include the;

- i potential for conflict, reflected by the controversies surrounding preferential procurement as it attempts to re-allocate resources;
- ii nature of incentive and disincentive structures created by the institutional frameworks governing preferential procurement; and
- iii the variety of strategies employed by firms in response to an evolving institutional framework that attempts to disrupt the status quo.

The identified areas are not discrete but overlap as firms interact in a restricted environment, shaping their behaviour in the process. For example, some firm's actions may be constraints for others resulting in more conflict or tension. Thus, the analytical framework proposed is located at the intersection of three perspectives namely institutional incentives; conflict and strategy as shown in Figure 3.1.

Each of the three perspectives brought together in the analytical framework are important components within their respective mainstream fields. A brief discussion of the main tenets of each is provided below and each perspective is approached as practically as possible from a construction management point of view. Afterwards, the three perspectives are synthesised through the re-conceptualisation of the research problem.

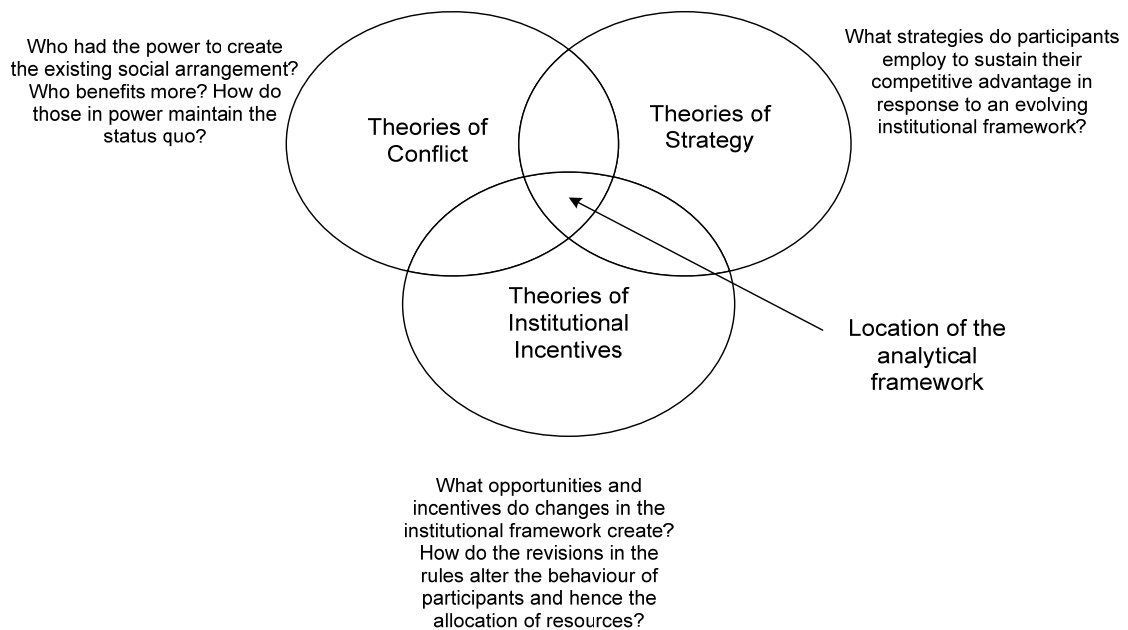


Figure 3.1 Location of the Analytical Framework

3.3 AN OVERVIEW OF THEORY OF INSTITUTIONAL INCENTIVES

Theories of institutional incentives combine elements from the theory of institutions and theory of incentives.

3.3.1 Theory of Institutions

The theory of institutions developed out of a combination of organisational/human behaviour theory and theory of transaction costs (Mahalingam and Levitt, 2004; North, 1990). This combination helps to understand the role institutions play in societies (North, 2005; 1990). Institutions can be defined in two main ways. For some, institutions mean organisational entities (Ostrom, 1999) whereas for others, they mean the humanly devised constraints, i.e. the rules, norms, values and strategies that shape human interactions and assist to generate a regularity of behaviour (North, 2005; 1990; Mahalingam and Levitt, 2004; Ostrom, 1999). The latter seems to be the dominant definition.

Institutions structure incentives in human exchange in social, political or economic contexts and make up the 'rules of the game' (North, 2005; 1990). These rules can be formal, explicit or written such as laws, constitutions, property rights or they can be informal, implicit or unwritten such as traditions, taboos and customs and they can either evolve or be created (North, 2005; 1990; Ostrom, 1999;). Institutional frameworks define and enforce property rights, i.e. the benefits and restrictions to the use of an asset, which form the basis of transactions (North, 2005). Property rights are generally enforceable by society and government which gives transactions some degree of certainty. However, the

implication of this is that there are costs to be incurred in the process (Ostrom *et al.*, 1993).

Transaction costs refer to the total costs involved in measuring and enforcing a transaction (North, 1990). Measurement costs (*ex-ante*) refer to the costs associated with measuring the attributes of what is being exchanged as well defining the rights being exchanged (North, 1990). Enforcement costs (*post-ante*) involve costs related to activities such as monitoring of contract performance and litigations (Ostrom *et al.*, 1993; North, 1990). These costs become the source of social, political and economic institutions (North, 2005).

In any institutional or contractual arrangement, satisfactory outcomes require co-ordination among various participants (Campbell, 2006). Thus, institutions can also be conceptualised as game-theory situations (Mahalingam and Levitt, 2004; North, 1990), in which parties behave strategically and should have the right incentives to want to co-operate. However, theory of institutions traditionally has three main criticisms namely; its assumptions that organisations are passive, that institutional environments exert a potent influence for conformity and its inability to address strategic behaviour (Oliver, 1991). Owing to this, elements of incentives are highlighted in this perspective.

3.3.2 Institutional Incentives Framework

Ferreira (1986) defines incentives as tangible or intangible rewards to individuals or groups designed to induce specified behaviour and disincentives as negative sanctions incurred by individuals or groups as a consequence of exceeding specified behaviour. Broome (2002) defines incentives as an inducement to motivate an organisation or individual to place greater emphasis on achieving an objective or to act in a certain way. Thomas and Thomas (2005) draw a distinction between incentive and reward by stating that a reward is recognition of performance exceeding expectation and thus incentives are placed before the event and rewards come later. What is common in these three definitions is that an incentive is an inducement aimed at achieving a certain specified behaviour. Therefore, incentives and rewards are inextricably linked with risk (Thomas and Thomas, 2005) as risk is the probability or likelihood of the specified behaviour not occurring.

Thus, having appropriate incentives in place is crucial to the success of any institution (Campbell, 2006). To this effect, Ostrom *et al.* (1993) highlight that incentives and disincentives provided within institutional frameworks are vital for the sustainable development of infrastructure. According to Thomas and Thomas (2005), determining whether or not an incentive is likely to produce the required result, entails that the

organisation or person offering the incentive should understand the value criteria of the intended beneficiary particularly in terms of what motivates them. Hence, central to the theory of incentives is the question that, what makes people or firms act in a particular way in an economic or business situation? (Laffont, 2002).

Organisations and firms come into existence to take advantage of opportunities created by the constraints or rules which govern the interactions (North, 1990). Thus a firm's action is a choice among narrowly defined sets of legal options determined by a group of actors which comprise the firm's organisational field (Mahalingam and Levitt, 2004). It is assumed that different institutional arrangements offer various participants different incentives and opportunities (Ostrom *et al.*, 1993). According to North (1990), the incentives built into an institutional framework play a key role in shaping the kinds of skills and knowledge that pay off since the activities that firms are engaged in reflect the incentives provided by the institutional constraints. This is crucial to the thesis which sets out to establish the 'types of activities' i.e. strategies that firms are engaged in as a response to government preferential procurement policies.

New institutional economics (NIE), in which transaction cost theory is located, focuses on issues such as insufficient information, opportunistic behaviour and uncertainty and how these affect the performance of diverse organisational forms particularly in the private sector (North, 2005; Ostrom *et al.*, 1993). Institutional economists assume that the performance of different institutional arrangements depend on the particular types of problems to be resolved (Ostrom *et al.*, 1993). Ostrom *et al.* (1993) suggest that institutional incentive theory shares the same assumption in that incentives are the result of the rules used to reward and constrain the benefits and costs of diverse activities.

North (1990) contends that different groups have different opportunity costs and bargaining power and hence different bargains result. Moreover, when joint outcomes depend on multiple participants contributing inputs that are costly and difficult to measure or observe, incentives exist for individuals to behave opportunistically (Ostrom *et al.*, 1993; North, 1990). Opportunism is defined as deceitful behaviour intended to improve one's welfare or outcomes at the expense of others, such as moral hazard (hidden action), adverse selection (hidden characteristics), shirking and rent-seeking behaviours (Barney and Herstely, 2006; Ostrom *et al.*, 1993). The asymmetry of information, power or resource distribution among participants provides opportunities for some to use these to their advantage in order to gain personal benefits (Ostrom *et al.*, 1993; North, 1990). For example, if an institutional arrangement provides no incentive to monitor contractor performance, profit maximising opportunistic contractors are likely to shirk in their performance by providing low quality products.

Hence it is crucial to consider how changes in the 'rules of the game' might influence the behaviour of participants and the desired outcomes (Caplow, 1994). The theory of institutional incentives provides a useful lens for examining preferential procurement systems from the standpoint of the people in the system i.e. contractors. The central question to the theory of institutions is that; how will organisations respond to changes in the institutional framework? (Mahalingam and Levitt, 2004). To augment institutional theories, conflict theory is discussed as a complementary tool for understanding institutional phenomena in the construction industry.

3.4 OVERVIEW OF THEORIES OF CONFLICT

3.4.1 Origins of Theories of Conflict

Conflict theory is a sociological perspective that can also be used to explore the responses of construction firms to preferential procurement policies and the consequences of their collective responses. It is a broad theory or collection of theories rooted in the work of social critics such as Karl Marx and Max Weber (Baldrige, 1975). Over time, conflict theory has undergone considerable revisions from Marx's class struggle ideas of 19th Century England to accommodate modern day concerns such as race, gender and religion (Tishler, 2001). Before discussing the basic elements of conflict theory, the definition and sources of conflict are reviewed.

3.4.2 Definition and Sources of Conflict

Conflict can be defined in several ways (Covertte, 2007). This research adopts the definition provided by Gardiner and Simon that conflict is "any divergence of interests, objectives or priorities between individuals, groups or organisations or non-conformity to requirements of a task, activity or process" (Gardiner and Simon, 1992:460). According to Fryer *et al.* (2004), conflict often emerges when people attempt to alter the ideas, beliefs, or actions of others. Gorse (2003) identifies numerous 'trigger events' of conflict as including perspectives, understandings, beliefs, values, goals and opinions caused by internal or external pressures, education or training, contractual or statutory requirements, expectations, incompatible behaviours, personal dislikes, loyalty, competition and limited resources.

3.4.3 Context and Levels at which Conflict Occurs

Collins (2005) differentiates conflict as existing at four levels namely; inter-group i.e. between groups, intra-group i.e. between members of a group, inter-personal i.e. between individuals and intra-personal i.e. internal conflict. Institutionalised sources of inter-group conflict are characterised by explicit rules for behaviour that set boundaries between

groups and legislation for different treatment of individuals based on group memberships (Collins, 2005).

Various research in the construction industry has tended to focus on issues around conflict, conflict management and dispute at the project level in relation to contracts (e.g. Fryer *et al.*, 2004; Loosemore *et al.*, 2000; Loosemore, 1999; Kumaraswamy, 1997; Fenn *et al.*, 1997; Conlin *et al.*, 1996; Gardiner and Simmons, 1995; 1992). Some of key themes have included whether or not conflict and dispute are the same; whether to encourage or discourage conflict and how to identify sources of conflict and ways to manage it and resolve disputes. However, the point of departure for this research is that the conceptualisation of conflict is at the national, ethnic and organisational levels concerned with conflict across the inter-group, intra-group and inter-personal levels. From this perspective, project level conflicts and disputes are merely expressions of the underlying structures. The reasons for conceptualising conflict in this manner are discussed below.

Firstly, the criteria for awarding preference in public procurement in RSA under the narrow-based approach have largely been based on membership to a particular race or gender group. As a result, there are potential conflicts among the different groups within the beneficiary group defined as black people (Iheduru, 2004). Secondly, there is potential conflict between the targeted beneficiaries and the non-beneficiaries as they all compete for limited government procurement contracts. Thirdly, it can be assumed that conflict is likely to occur between historically empowered enterprises and historically disadvantaged enterprises working on the same projects as joint venture partners or main and sub contractors because of different motivations. The contextualising of conflict in this research is in close agreement with that of Collins (2005) who identifies the contexts in which conflict manifests itself in terms of four broad categories; policies, procedures and norms, power distribution and trust. These elements form the basis for conflict theory discussed below.

3.4.4 Basic Tenets of Conflict Theory

Corvette (2007) highlights three widely recognised schools of thought on conflict. The first is the traditional school which views conflict as bad and should be avoided. This approach fosters both avoidance and competitive behaviour in interaction. The second is the human relationship school of thought which views conflict as natural and can be functional or dysfunctional. From this perspective, conflict can be a medium through which views and opinions are made known and opportunities for creativity and persuasion made possible. The third is the interactionist view which holds that conflict is inevitable and can actually

be helpful. The positive and negative aspects of conflict of value are summarised in Table 3.1

Table 3.1 Positive and Negative Values of Conflict

Positive Aspects	Negative Aspects
Diffuses more serious conflicts.	Can lead to more hostility and aggression.
Stimulates change and fosters creativity and innovation as new options are explored.	Desire to 'win' blocks exploration of new opportunities.
Enhances communication if both parties are committed to mutual gain.	Inhibits communication; relevant information is never shared.
Increases performance, energy and group cohesion.	Causes stress; creates an unproductive atmosphere.
Balances power and influence if collaborative problem solving techniques are emphasised.	May cause loss of status or position when both parties take it as a contest of wills and strive for a win-lose outcome.
Clarifies issues and goals.	Real issues can be overlooked as positions become confused with personalities. May distort behaviour.

Source: Verma, 1995:95.

Collectively, conflict theory sees society as constantly changing in response to social inequality and social conflict (Tishler, 2001). As Gardiner and Simon (1992) also found, conflict can lead to change and change lead to conflict, thereby making the conflict/change process cyclic. The theory of conflict also deals with the information, resources and power exploitation that exist in social structures (Corvette, 2007). It emphasises competition over resources as a source of conflict and asserts that some groups benefit more than others in an existing social arrangement (Bassis *et al.*, 1991). Central to conflict theory are the questions of; who had the power to create the existing social arrangement, who benefits from them, and; how does the dominant group or those in power maintain the status quo? (Bassis *et al.*, 1999). In the view of Caplow (1994), the more powerful actors in a system take the 'lion's share' and ask for more. South Africa's history provides a classic example of how classes, running along racial lines, with ownership and control of scarce resources can act to keep others out of power or suppressed so as to maintain a status quo.

Power refers to the perception of control over others, the ability to influence others so as to further one's own interests, and/or the ability to resist the activities of others (Collins, 2005; Atlee and Atlee, 1992). Collins (2005) asserts that when conflict occurs, the distribution of power is critical but, because it is not always clear which party to a conflict has the greater power, the parties involved often engage in win/lose bargaining strategies which escalate conflict rather than resolve it (Collins, 2005).

Similarly, Loosemore (1999) argues that in construction projects, conflict emerges from the power struggles which are the medium through which responsibilities are redistributed. He concludes that the ones with relatively little power often emerge as the ones carrying high levels of responsibility leading to further conflict (Loosemore, 1999). In addition, Loosemore *et al.* (2000) suspect that the problem of construction conflict lies in the industry's inability to manage it constructively. As a result, encouraging conflict in the construction process may sometimes be counterproductive, suggesting that conflict reduction may be a better option (Loosemore *et al.*, 2000).

Overall, conflict theory sees inequality as the defining characteristic of any society. Conflict theorists posit that it is in the interest of those who have wealth to retain and for those who have little or no wealth to try to improve their chances in life (Tishler, 2001; Bassis *et al.*, 1999). This view highlights the assumption that there is an inherent conflict of interests between the two groups. Conflict theorists oppose inequalities on the basis that they impede the optimal functioning of individuals and society (Browne, 2005; Tishler, 2001).

From a conflict theory perspective, preferential procurement is primarily concerned with the provision of opportunities to historically marginalised groups and seeks to re-balance the existing social and economic interests. The key question is; how do the interests of different groups manifest themselves in the construction industry? However, conflict theory is criticised for over-emphasising conflicts and change; simplifying relationships between groups and ignoring that situations exist where subordinate groups control interactions (Tishler, 2001; Bassis *et al.*, 1991). Consequently, the research adopts the convergent insights of institutional incentives and conflict perspectives to identify and enhance the understanding of the range of construction firms' strategic and tactical responses to an evolving public procurement environment.

3.5 OVERVIEW OF THEORIES OF STRATEGY

Interactions between the institutional environment and the business organisation are ongoing processes that yield new problems and new opportunities (Cronje *et al.*, 2004). Government exerts its influence on business in a number of ways. In the RSA context with the issue of equity, the government has instituted several legislation that attempt to induce organisations to transform in order to include the participation of historically disadvantaged groups. Legislation such as EEA (1998), PPPF Act (2000), B-BBEE Act (2003), Codes of Good Practice (2007) all reflect government's response to the exclusion from economic activities of blacks, women and physically challenged persons and a changing business environment. By their nature, entrepreneurs will continuously be

seeking opportunities that changes in the institutional environment may generate. Thus it is vital to align the organisation with the environment in which it operates in order to fully exploit the opportunities and deal with possible threats (Cronje *et al.*, 2004; Porter, 1980; 1985).

The concept of strategy was 'borrowed' from the military principles to management science and helps organisations to adapt to a changing business environment (Cronje *et al.*, 2004; Fellows *et al.*, 2002). Strategic management emerged as a distinct discipline about 3 decades ago and has evolved through a number of schools of thought namely; strategic planning (Ansoff, 1965; 1984); Strategic-structure school (Chandler; 1962; Channon, 1978); Power-culture school (Johnson and Scholes, 1999; Cohen and Braford, 1990; Mintzeberg, 1983); Competitive advantage school (Brandeburger and Nalebuff, 1996; Hamel and Prahalad, 1994; Porter, 1980;1985); Incrementalist school (Quinn, 1980) and the current Synthesis school (Mintzberg, 1994). The field of strategy is broad and has been widely studied in different ways. However, this research is only concerned with strategy as it relates to firms' responses to government changing public sector procurement regulatory environment perceived from the institutional and conflict perspectives.

3.5.1 Current View of Strategic Management

The synthesis school which is the current view of strategic management is an integration of the respective schools of thought into a holistic perspective (Fellows *et al.*, 2002). The two main approaches used in the Synthesis school of thought are the study of patterns of strategic change over time and the identification of different development routes (Fellows *et al.*, 2002; Johnson and Scholes, 1999). Figure 3.2 illustrates the different routes through which an organisation may achieve their realised strategy.

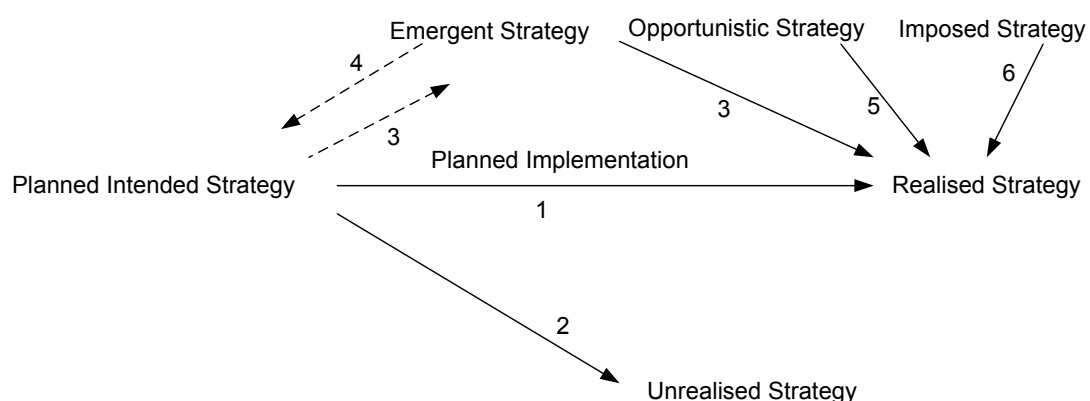


Figure 3.2 Alternative Routes for Achieving the Realised Strategy

Source: Fellows *et al.* (2002)

Fellows *et al.* (2002:25) provides the following descriptions of the model above. Route 1: the intended strategy is realised through planned implementation. Route 2: the unrealised strategy is when the intended strategies are found to be inappropriate or unachievable. Route 3: the emergent strategy which will emerge from a pattern of decisions and actions taken in an incremental way by people in the organisation. Route 4: the emergent strategy may become the planned intended strategy of the organisation over a period of time. Route 5: the opportunistic strategy may be based on pure serendipity or may be harvested systematically. Route 6: the imposed strategy allows for the fact that strategy may be imposed on an organisation perhaps by a parent organisation or government or client organisation upon whom the business depends for survival.

From the model in Figure 3.2, it can be appreciated that strategy is dualistic in nature, consisting being both short-term and long-term, with planned and unplanned features. Strategy is used in a variety of ways and has been defined in several ways by various authors such as Chandler (1962), Andrew (1971), Channon (1978), Newcombe, (1990) and Andrew (1990). However the various definitions can be grouped in five main ways; as plan, pattern, position, perspective and ploy (Fellows *et al.*, 2002; Mintzeberg, 1994). As noted by Fellows *et al.* (2002), 'strategy as plan' was the original approach and still dominates the literature.

However, for purposes of exploring the research problem identified in this thesis, the bias is towards viewing 'strategy as a pattern'. As a pattern, strategy can often be deduced by observing the actions and reactions of an organisation, past or present (Fellows *et al.*, 2002; Johnson and Scholes, 1999). As Hillebrandt and Cannon (1990) found in their study of construction firms, most of the firms studied had no written strategy. To Barney and Herstely (2006), strategy is a theory about how firms can best gain competitive advantage. They argue that strategy is a theory because it is the firm's 'best bet' about how competition will evolve and how evolution will be exploited. In other words, firms cannot predict with certainty how competition will evolve; so strategy will always remain theoretical (Barney and Herstely, 2006).

3.5.2 Views on Formal Theories of Strategic Management

As indicated earlier, the conventional or formal theories of strategic management relate to strategic planning. Strategic planning is a "sequence of analytical and evaluative procedures to formulate an intended strategy and the means to implementing it" (Johnson and Scholes, 1999:57). It also "involves the determination of a course of action, and the allocation of resources to facilitate action in pursuit of set goals" (Dansoh, 2005:164).

Betts and Ofori (1992) suggest that strategic initiatives can take different forms in construction firms and there is scope for the application of strategic planning irrespective of firm size. A recent study by Dansoh (2005) in the Ghanaian construction industry reveals that most construction firms do not know what strategic planning is and/or do not undertake strategic planning; rather, they focus on project planning in place of long-range planning. Dansoh (2005:164) is of the view that small firms in particular should adopt longer-term perspectives on strategy in order to “face the downward ‘plunging’ by large firms that get dislocated by market competition”.

However, some authors have questioned the value and validity of conventional theories of strategic management relating to strategic planning (Johnson and Scholes, 1999; Hillebrandt, Cannon and Lansley, 1995; Mintzberg, 1994, Stacey, 1990; Quinn, 1980). Mintzberg (1994) argues that strategy and planning are quite different. According to this perspective, strategy is something developed and synthesised by the entrepreneur whereas planning is what the planner does when s/he codifies and makes explicit the strategy so that it can be implemented (Mintzberg, 1994). The argument suggests that unlike the traditional approach, the entrepreneur is responsible for the creation of new ideas in the firm. In addition, while in large firms strategic decisions are the preserve of managers, in small firms, everyone is typically involved (Hillebrandt *et al.*, 1995). Quinn (1980) claims that most strategic decisions are made outside the formal planning system and that the strategy emerges or evolves through incremental opportunistic steps.

Similarly, Stacey (1990) draws attention to the frequent adoption in practice by firms of the opportunistic approach and rejects the notion of grand strategies. Instead, Stacey suggests that because of the inherent uncertainties in any business, firms should adopt a flexible approach, a step-by-step development process based on experience (Stacey, 1990). Stacey (1990) emphasises that companies should not be engrossed in the idea of a grand design at the expense of their ability to change or even reverse policies in keeping abreast with changes.

In their study of UK construction firms, Hillebrandt *et al.* (1995) found that there were two contrasting views on strategic planning. One was held by firms who abandoned the strategic planning process believing that the business environment was too uncertain to facilitate planning. The other view was to maintain a firm's planning process precisely because of the uncertainty of the environment. Hillebrandt *et al.* (1995) concluded that in periods of business stability, firms spend a lot of time on the detailed planning but in periods of business upheaval, the situation is reversed when being flexible and using the resources of a business in new ways is vital. They advocated a flexible approach based on a mixture of intuition and informed analysis (Hillebrandt *et al.*, 1995).

It appears not all firms use a strategic management process to choose and implement strategies. As Johnson and Scholes (1999: 26) point out, “while many organisations have formal planning systems, however, not all organisations have them and even if they do, it would be a mistake to assume that the strategies of organisations necessarily come through them”. They explain that the management of strategy can also be seen as a process of ‘crafting’ as opposed to formal planning processes, whereby strategies develop in an organisation based on the manager’s experience and sensitivity to change in their environment. Johnson and Scholes (1999) further contend that the extent to which the formalised approach to strategy results in organisations performing better than those which do not follow a systematic approach is equivocal.

Similarly, Barney and Herstely (2006), point out that some strategies emerge over time as firms respond to unanticipated changes in the structure of competition in the market. In their view, emergent, as opposed to intended strategies are particularly important for entrepreneurial firms because a firm’s ability to quickly change its strategy in response to emerging trends in the industry is an important source of competitive advantage (Barney and Herstely, 2006). Likewise, Fellows *et al.* (2002) assert that most construction companies evolve strategy in an emergent way particularly when projects are obtained in an unpredictable and *ad hoc* manner to the extent that the organisation’s strategy becomes the patterns of projects which it is successful in obtaining.

From a strategic perspective, BEE legislation is intended to compel enterprises to transform their organisations if they wish to do or continue doing business with government, creating ‘incentives’ for organisations to transform. As the institutional framework evolves, organisations are expected to respond accordingly to that changing business environment. Thus, the key question is: what strategies in terms of actions and practices do construction firms employ in their interactions with government and other firms to exploit the opportunities created by the constraints within the procurement institutional framework? The likely options are explored under Section 3.6.

3.6 RE-CONCEPTUALISING THE RESEARCH

As has been shown previously, the RSA government has provided institutional frameworks to govern ‘how firms should do business and with whom’ in support of government’s socio-economic objectives. Within the changing public procurement environment, preference is given to individuals from previously disadvantaged groups or to companies which show compliance with government’s BEE requirements. However, providing strong incentives for others to change is problematic particularly when the people whose behaviour is to be changed have opportunities to tamper with the system

for their own advantage (Caplow, 1994). As such, conflict is likely to occur when governments attempt to change or influence the behaviour of industry participants by changing the ‘rules of the game’ i.e. institutional requirements.

3.6.1 Organisational Responses to Institutional Changes

Oliver (1991) identifies five behavioural patterns that organisations may exhibit in response to institutional changes namely; acquiescence, compromise, avoidance, defiance and manipulation. These are presented in Table 3.2 in ascending order from passive to active resistance to institutional changes.

For organisations that are less dependent on the environment or whom legitimacy is not so crucial, avoidance, defiance or even manipulation of the institutions in order to enhance their operations are highly likely options (RSA, 2007b; Batts, 2000; Oliver, 1991; Meyer and Rowan, 1977). Many cases of defiance for example, through challenging affirmative action policies in court were highlighted by the USA experiences in the literature.

Table 3.2 Strategic Responses to changing Institutional Frameworks

Option	Strategy	Tactics	Explanations/Actions
1	Acquiescence <i>*(Conforming or acceding to institutional requirements.)</i>	Habit	Following taken-for-granted norms.
		Imitate	Mimicking institutionalised models.
		Comply	Obedying rules and accepting norms.
2	Compromise <i>*(Partial or qualified conformity).</i>	Balance	Balancing the expectations of multiple constituents.
		Pacify	Placating and accommodating institutional elements.
3	Avoidance <i>*(Precluding necessity of conformity).</i>	Bargain	Negotiating with institutional constituents.
		Conceal	Disguising non-conformity.
		Buffer	Loosening institutional attachments.
4	Defiance <i>*(Rejection or departure from institutional requirements).</i>	Escape	Changing goals, activities, or domains.
		Dismiss	Ignoring explicit norms and values.
		Challenge	Contesting rules and requirements.
5	Manipulation <i>*(Purposeful and opportunistic attempt to co-opt, influence or control institutional pressures and evaluations).</i>	Attack	Assaulting the sources of institutional pressure.
		Co-opt	Importing influential stakeholders.
		Influence	Shaping values and criteria.
		Control	Dominating institutional stakeholders and processes.

Source: Adapted from Oliver, 1991:152.

* Definitions of strategies added to the Table but obtained from the same author

Nevertheless, some authors assert that organisations may eventually exhibit similar features as they respond to institutional changes (DiMaggio and Powell, 1983). At that point, there might even be no need for rules as these may become embedded in the organisation's practices. This view is implied in a more recent argument by Sweet (2006:171) that programmes implementing preferential procurement policies should not just be created simply to change government spending, rather they should be "designed to foster long-term changes in behaviour that will eventually obviate the need for the government programmes". The different views on organisational responses suggest that there is no consensus of a general pattern of response to any given change. The five options identified above (Table 3.2) may also represent transitory stages in a process (i.e. archetypes) between manipulation and acquiescence as opposed to discrete routes. While Oliver (1991)'s work presents a useful typology of responses to institutional processes, it does not however address the consequences of these strategies particularly the resistant strategies. The objectives of this research take this shortcoming into account.

3.6.2 Implications of Preferencing for Construction Firms

As suggested earlier in this thesis, to implement preferential procurement, large firms and clients are required to unpack contracts in order to provide work opportunities for targeted labour and enable small firms to participate as either joint venture partners or subcontractors or material suppliers. To illustrate, a study conducted by Shakantu *et al.* (2002) indicates that over 200 SMMEs, including 102 subcontractors were engaged on the Cape Town International Conventional Centre construction project. The contract had to be packaged into small percentages of work value that could be given to *inter alia* women equity, previously disadvantaged individuals (PDIs), HDE suppliers of materials and plant, HDE consultants and HDE subcontractors (Shakantu *et al.*, 2002). The BEE requirement of this contract was 40% empowerment participation. This scenario signals that there are merits and demerits to unbundling contracts as discussed below.

Merits of Unbundling Contracts

A key advantage of unpacking contracts into smaller units is that empowerment opportunities can be explored down the procurement supply chain (Shakantu *et al.*, 2002). The practice potentially creates business opportunities particularly for small enterprises which can over time, grow, develop capacity and enter the mainstream economy. In addition, because SMME's are generally more labour-intensive than large firms, they can create employment opportunities for previously disadvantaged individuals and contribute

to reduction of income disparity between the historically empowered and historically disadvantaged groups (Watermeyer, 2000; Gounden, 2000).

For historically empowered enterprises, in a survey conducted in 2005, 70% of 30 South African business owners indicated that embracing BEE was a key issue for them winning business (Business Day, 2006, 2006b). In the same study, business owners in the construction industry equally indicated that their empowerment status had a significant effect on gaining new clients. Nevertheless, the practice of unbundling contracts also has a number of disadvantages.

Demerits of Unbundling Contracts

Among the demerits of unbundling contracts into smaller packages are developmental reasons. This procurement system presents difficulties for the target group in terms of building up its expertise and confidence in the management of projects of significant size and complexity. Economically, unbundling contracts may generate extra costs for the large firms that are ultimately passed on to the client (CIDB *et al.*, 2005). It could increase risks and management responsibilities on the part of the main contractor (CIDB *et al.*, 2005). As each project participant often contributes inputs that are costly and difficult to measure or observe, the large numbers of SMMEs create an environment conducive to opportunistic behaviours (Ostrom, *et al.*, 1993).

Opportunistic behaviours result from asymmetric information. That is to say, a party that knows more about the qualities or characteristics of something, e.g. their skills, tends to behave opportunistically by using that informational advantage to the detriment of the other (Ostrom *et al.*, 1993; North, 1990). This is particularly critical in the RSA context where majority of historically disadvantaged individuals engaged on projects have very limited technical skills.

Thus, unless the contracts provide sufficient incentive to monitor performance, sub-contractors, suppliers or joint venture partners are likely to shirk in their performance by providing low quality products. At the same time, the increased use of historically disadvantaged enterprises often with low levels of technical skill makes them more exploitable by those who possess those technical skills (Mjoli-Mncube, 2006; CIDB *et al.*, 2005; CIDB, 2004; CSIR, 2003).

Unbundling contracts encourages fronting whereby firms circumvent the BEE rules yet, appear at face value as though they were complying (Mjoli-Ncube, 2006; CIDB *et al.*, 2005; CIDB, 2004). Avoidance strategy is “motivated by the desire to circumvent the conditions that make conforming behaviour necessary” (Oliver, 1991: 156). Under the

RSA law, fronting is defined as any entity, mechanism or structure designed to circumvent the BEE requirements established by various policies and legislations (RSA, 2007a).

A study conducted by the Department of Public Works (DPW) in 2003 reported that 15 construction firms had defrauded the Department of Public Works (DWP) of contracts to the value of over R440 million (Jacks, 2006; Moloi, 2006; Ntuli, 2005). Measures for mitigating against fronting practices recommended by the Department included; blacklisting at CIDB contractor register, further investigation by the National Prosecuting Authority (NPA), contract cancellation where delivery is unlikely to be heavily affected, submission of accreditation certificate by all who claim BEE status before a contract can be awarded to them (Moloi, 2006). In the same study, it was indicated that the DPW had identified four types of fronting (Moloi, 2006). These behaviours are similar to those found by Jacoby (1998). However, while it draws on the report by Moloi, (2006), Table 3.3 attempts to show that the forms fronting takes can be explained in more than four ways.

The forms of disguising conformity illustrated below involve both the switches (e.g. 7) and conduits (e.g.5) highlighted in chapter two. These involve the use of firms as 'conduits' to pass contracts and monetary gains from the public sector clients to non-targeted beneficiaries i.e. non-BEE companies or non-women empowered and -owned companies. Despite the several forms fronting takes, a common element that is often present is the lack of meaningful economic participation by the intended beneficiaries. Fronting structures generally claim a higher BEE status than the actual substantive economic benefits flowing to the woman or black beneficiary would suggest (RSA, 2007b).

Organisations that do not want to transform opt may opt to front rather than engage meaningfully with historically disadvantaged individuals and enterprises and transfer skills (Mjoli-Mncube, 2005). Historically disadvantaged individuals and enterprises fall prey to fronting mainly because of lack of finance and technical skills (Mjoli-Mncube, 2005).

Gathering from various sources, the main reasons for resisting transformation include, perceived loss of competitiveness and efficiency, conflicting organizational objectives and interests, inadequate understanding of the rationale behind the policy or ramifications of non-compliance and little dependence on government work (Hall and Soskice, 2001; Caplow, 1994; Oliver, 1991; Meyer and Rowan, 1977). However, despite the rationalisation, the practice of fronting has legal, economic and social implications (CIDB, *et al.*, 2005; Mjoli-Mncube, 2005).

While moral hazard and adverse selection problems are potentially inherent in all contractual or hierarchical relations, they seem to be more pronounced under preferential procurement. This is because, in order to meet BEE tendering requirements, most firms

seem to enter into relationships on an *ad hoc* basis without prior interactions or development of trust. This augurs well with Adam Smith (1776)'s observation that when people seldom deal with each other, they are disposed to cheat because the gains arising from their tactics outweigh the loss by the injury which it does to their character. Contemporary authors (e.g. Barney and Hesterly, 2006; Fryer *et al.*, 2004) have reiterated this view.

Table 3.3 Ways of Concealing Non-conformity

No.	Types of concealment	Description
1	Use of "unaware" black Shareholders to claim BEE status.	A company obtains legitimate documents showing black shareholders so it can qualify to tender as a BEE company but without the knowledge of the black "owners". Thus, the "owners" have no control, management or involvement in the 'BEE' company.
2	Establish a skeleton BEE company / *buy equity in an existing BEE company.	A black-owned (50.1%) or empowered (25.1%) company tenders, wins the contract and subcontracts the work to a white-owned company in its entirety or partially. The minority white shareholders in the BEE company often happen to be majority shareholders in the white-owned company which gets the sub-contract. The BEE company undertakes no or negligible amount of work.
3	Use of a fictitious BEE company.	A non-existent company claims to be BEE, tenders and gets awarded a contract. It then takes the work to be performed by a white-owned company which receives a project fee payment.
4	Use of a joint venture with a black partner to claim BEE status.	A Non-BEE and BEE company form a joint venture, tender on that basis and win a contract. But, the BEE partner is marginalised on the project; without any responsibilities, control or signing powers.
5	Use of a BEE subcontractor to claim a high BEE component.	A non-BEE company tenders as a main contractor on the basis of subcontracting a substantial amount of work to a BEE subcontractor. Once the company wins the tender, it instead subcontracts a substantial part of the work to a white-owned company and the BEE subcontractor gets nothing or a negligible amount of work. The white subcontractor invoices the BEE company which invoices the main contractor. Sometimes, the black subcontractor is told to quote very low rates in order to be given a portion of the work.
6	Incorporating women and black shareholders in a non-BEE company to claim BEE status.*	A white-owned company incorporates women and/or blacks as shareholders and tenders on that basis as a BEE company. But, the women and/or blacks are marginalised with no responsibilities, management or control of the business or projects.
7	Incorporating women shareholders in a BEE company to claim a higher BEE status particularly woman equity.*	A black male-owned company incorporates, usually, female family members as co- or full owners and tenders on that basis. However, the women are marginalised with no participation in the running of the business or projects (are usually just used to "fetch" tender documents from the clients).
8	Use of woman equity representation as a façade.*	A 100% male-owned company tenders for contracts which give preference to woman-owned or empowered companies by claiming woman equity but only on paper.

* Explanations of these types of concealment emerged from the field data to supplement the DPW's classification of fronting as presented by Moloi, 2006.

Barney and Herstely (2006) assert that if the value of cheating is sufficiently large, a firm will cheat rather than co-operate. Fryer *et al.* (2004) note that in the short term one-off ventures where the risk of having to work with the same person is minimal, the most profitable strategy may be to dominate the partnership. In the process, the dominating partner ensures that the benefits accrue to them at the expense of the other. Fryer *et al.* (2004) however, caution that such dominant strategies may result in the partner obtaining a bad reputation, exclusion from further projects or legal disputes.

Barney and Hesterly (2006) concur that cheating may foreclose opportunities for developing other future alliances once the information becomes widely known. However they argue that the potential negative effects of cheating on a firm's future opportunities is not always an effective disincentive, maintaining that there are subtle forms of cheating which may not become public or where the responsibility for the failure of the alliance may be ambiguous (Barney and Hesterly, 2006).

By applying the triadic analytical framework, theoretical issues surrounding the research topic have been explored including the complexities of the research problem and gaps in the literature. The following section re-establishes the research questions to be explored empirically.

3.7 RESTATEMENT OF THE RESEARCH QUESTIONS

The analytical framework integrates elements of institutional incentives, conflict and strategy for purposes of achieving the research objectives. It generates questions for interrogating the literature and field data for coming up with new configurations of ideas (Coffey and Atkinson, 1996). The research questions are restated as:

- i How do construction firms understand government's evolving preferential procurement policies?*
- ii What factors can be identified as constraining the implementation of preferential procurement policies in the industry?*
- iii How do construction firms respond to preferential procurement policies?*
- iv What are the outcomes of the collective responses of construction firms to preferential procurement policies?*

Answering the above questions requires collection of empirical data. The selection of an appropriate research methodology in order to evaluate the identified research issues in practice is described and justified in the next chapter. The analysis and interpretation of

data are intended to bring more clarity to the understanding of responses of construction firms to preferential procurement policies in terms of their strategies, actions, practices and motivations.

3.8 CONCLUDING REMARKS

This chapter set out to develop a conceptual and theoretical framework for the research. The aim was to position and examine in detail the research problem and its sub-problems highlighted in chapters one and two. The analytical framework developed brought together components of institutional incentives, conflict and strategy perspectives respectively, reflecting a multidisciplinary approach.

The framework showed that changes in the institutional frameworks create conflicts among the various actors as they compete for limited resources from the public sector. Because the opportunities and incentives provided by the institutional changes are different, participants are likely to employ different strategies and tactics in response. Some firms may comply fully with government BEE regulations relating to preferential procurement while others may avoid, defy or even manipulate the institutional requirements for private gain. The analytical framework proposed assumes that the strategies employed can be inferred from the actions and practices of the participants in preferential procurement.

A major challenge in adopting a triadic analytical framework is the difficulty of integrating theories or concepts from different fields to suit the research problem. To achieve this, high levels of flexibility and creativity are required. Applying more than one perspective to the same problem provides a better framework which compliments the relative weaknesses of each. This chapter proposes that the analytical framework developed combined with the grounded theory methodology discussed in the following chapter provides a more holistic understanding of the realities of preferential procurement policies in the RSA construction industry.

CHAPTER 4: PHILOSOPHICAL AND METHODOLOGICAL FRAMEWORK

4.0 INTRODUCTION

The previous chapter argued for the adoption of a triadic analytical framework as the basis for conceptualising the research problem, analysing the data and building theory. This chapter discusses how the research problem identified in the literature dictates the means of addressing it. Its purpose is to describe and justify the choice of the philosophical underpinning and methodology guiding this research. Justifying one's choice of particular methodologies and methods extends into one's assumptions about reality and their understanding of human knowledge and what status can be ascribed to it (Knox, 2004; Crotty, 1998). The concept of *paradigm* initially proposed by Kuhn (1970) refers to the progress of scientific practice based on people's philosophies and assumptions about the world and the nature of the knowledge and what constitute proper techniques and topics for inquiry (Welman *et al.*, 2005; Punch 1998).

Easterby-Smith *et al.* (2002; 1991) suggest three different levels at which the term paradigm can be used namely:

- i the philosophical level, where it is used to reflect basic beliefs about the world (ontology/epistemology /theoretical perspective).
- ii the social level, where it is used to provide guidelines for the conduct of research (methodology).
- iii the technical level, where it is used to specify the methods and techniques which should be ideally adopted when conducting research (methods).

It means one's basic beliefs about the world will be reflected in the way they design the research, how they collect and analyse data and how they present the results (Welman *et al.*, 2005; Hussey and Hussey, 1997). Therefore, chapter four is structured under the following main headings: ontological and epistemological assumptions, theoretical perspectives, methodologies, methods and limitations.

4.1 ONTOLOGICAL AND EPISTEMOLOGICAL ASSUMPTIONS

Ontology is the study of 'what is' i.e. the nature of what exists in the world, the form and structure of reality (Gray, 2004; Crotty, 1998; Punch, 1998; Williams and May, 1996). In other words, what is there that one can know? Broadly speaking, there are two contrasting ontological traditions namely; the Parmenidean and the Heraclitean, with each taking various forms (Gray, 2004; Chia, 2002; Williams and May, 1996). The Heraclitean ontology emphasises a changing and emergent reality whereas the Parmenidean stresses

a permanent and unchanging reality (Chia, 2002). Thus, Heraclitean refers to the ontology of *becoming* and Parmenidean the ontology of *being* (Gray, 2004; Chia, 2002).

The ontology of *being* sees reality as made up of clearly formed entities with identifiable properties and characteristics and assumes that since entities can be held constant, they can be represented by symbols, formulae, words and concepts (Gray, 2004; Chia, 2002). This dominant view has implications for 'wicked problems' whose variables cannot be easily identified or measured. Characteristics of wicked problems include; lack of definitive formulation, lack of a well-described set of potential solutions; possibility of the problem being a symptom of another problem and the capability of causes to be explained in numerous ways (Rittel and Webber, 1979).

To contrast, the ontology of *becoming* stresses that what is real or external world consists of representations of the creation of the mind, i.e. it consists only of ideas (Gray, 2004; Chia, 2002; Crotty, 1998; Williams and May, 1996). It shares the view that physical objects exist independently of our perception of them and reality is associated with an undefined form and chaos (Gray, 2004; Williams and May, 1996). It maintains that the world consists of 'real' things and that although reality is not always directly known; it is in principle knowable (Williams and May, 1996).

Epistemology refers to the study of knowing, that is, how we know what we know and the question of what counts as knowledge (Gray, 2004; Easterby-Smith *et al.*, 2002; 1991; Creswell, 1998; Punch, 1998; Hussey and Hussey 1997; Williams and May, 1996; Babbie, 1995; Guterman, 1994;). Epistemology questions what the relationship is between the knower and the known or that which is being researched (Punch, 1998; Hussey and Hussey 1997). It is the theory or nature of knowledge claims that informs the theoretical perspective of research and thereby the methodology (Crotty, 1998; Punch, 1998).

In conducting research, a linkage between ontology and epistemology and methodology is inferred i.e. how can a researcher inquire into what s/he believes can be known? (Proctor, 1998). According to Williams and May (1996), the ontological assumptions shape the epistemological position. For example, the *being* ontology informs a representational epistemology in which signs and linguistic terms are taken as accurate representations of an external world (Gray, 2004; Chia, 2002).

Morgan and Smircich (1980) identify a continuum of ontological assumptions encompassing six stages, ranging from assumptions which view the nature of reality as a concrete structure to those that see it as a projection of human imagination. Guterman (1996) suggests that infinite epistemological stances exist, each falling somewhere along a continuum between the objectivist and subjectivist extremes. However, this research

broadly classified the epistemological positions as objectivist, constructionist and subjectivist (Crotty, 1998). Objective epistemology which is informed by the *being* ontology holds that truth and meaning reside in their objects independently of any consciousness (Gray, 2004; Crotty, 1998; Held, 1990). From this objectivist position, understanding and values are considered to be objectified in the people being studied and discovering the objective truth is possible (Gray, 2004; Crotty, 1998; Williams and May 1996; Held 1990). This epistemology underpins the positivist theoretical perspective discussed later.

The constructionist epistemological position rejects the view of human knowledge posited by objective epistemology that there is an objective truth 'out there' waiting for us to discover it (Stahl, 2003; Mir and Watson, 2001; Mir and Watson, 2000; Crotty, 1998; Gergen 1985). Conversely, social constructionism asserts that there is no meaning without a mind and meaning is constructed in communication and discourses (Stahl, 2003; Crotty, 1998; Gergen, 1985). That is to say, knowledge is a social invention, a product of social interaction and practices as opposed to an objective representation of reality.

Social constructionism is shaped by the *becoming* ontology. It emphasises the interplay between the subject and object and is both realist and relativist (Mir and Watson, 2000; Crotty, 1998). The argument is that to say meaningful reality is constructed is not to say that it is not real. Then, it is relativist because to say that things are "the way things are" is just "the sense we make of them" (Crotty, 1998:64). For constructionists, the existence of a world without a mind is conceivable but meaning without a mind is not. Therefore, realism in ontology and constructionism in epistemology are quite compatible (Mir and Watson, 2001; Mir and Watson, 2000; Crotty, 1998). Constructionism informs most theoretical perspectives including the interpretive paradigm discussed in Section 4.2.2.

To contrast, subjective epistemology holds that meaning does not come out of interplay between subject and object but is imposed on the object by the subject (Crotty, 1998; Held, 1990). Here, the object is taken to make no contribution to the generation of meaning, in other words, the act of knowing makes its own (subjective) reality (Held, 1990). Subjective epistemology is mostly found in post structuralist and post modernist forms of thought (Crotty, 1998).

Crotty (1998) and Easterby-Smith *et al.* (1997) suggest three specific reasons for exploring and understanding the research philosophy relating to knowledge creation. Firstly, it enables the researcher to refine and specify the research methodologies to be employed in the study. Secondly, it allows the researcher to evaluate different

methodologies and methods in terms of their appropriateness and limitations which makes the researcher more aware of what is possible in research. Thirdly, it allows the researcher to be creative and innovative in either selection or adaptation of methods that they would otherwise have never conceived of.

The researcher should ask him/herself questions such as, is there an objective truth that needs to be objectively described and identified with precision and certitude (Easterby-Smith, *et al.*, 2000; Crotty, 1998; Held 1990). Are there ways of seeing things which are merely human constructions whose processes need to be explored and understood through a similar process of meaning? (Crotty, 1998; Held, 1990). Each epistemological position has different philosophical assumptions that favour particular methods of reasoning. A researcher must therefore not assume that other researchers or readers hold similar attitudes and definitions of what constitute knowledge (Chia, 2002). Owing to this, the epistemological position of a particular research endeavour must be stated clearly as it gives an indication of where the researcher's knowledge comes from and how reliable it is (Williams and May, 1996).

To this end, the theory of knowledge embedded in the theoretical perspective of this research is constructionist. Based on Mir and Watson (2000)'s argument, ontological realism is an important cornerstone for an applied field like construction management and epistemological relativism helps to explore the constructed nature of the field, where the researcher is an active participant rather than a dispassionate observer. This epistemological position provides an appropriate lens through which to understand the processes whereby ideas are constructed between people in the construction industry. Because constructionism locates knowledge in the context of social groups (Guterman, 1994), different people may construct meaning in different ways even in relation to the same phenomenon.

Indeed, in exploring the influence of preferential procurement policies in the construction industry, the study purports that there are just humanly fashioned ways of seeing things, diverse ways of knowing, and distinguishable sets of meaning and separate realities (Crotty, 1998). As chapter two demonstrated, concepts such affirmative action and preferential procurement need not have an objective independent existence 'out there'. It is unlikely that these exist independently of individual consciousness and can be quantified. However, the moderate constructionist position taken recognises that while knowledge is socially constructed, some aspects of reality are not (Weber, 2004; Lenard *et al.*, 1997). The next question then becomes; how should the researcher conduct his/her research given their understanding of the nature of knowledge?

4.2 THEORETICAL PERSPECTIVES

Theoretical perspective refers to the philosophical position that informs the chosen methodology for any research (Crotty, 1998). At this level, ontology sits alongside epistemology because theoretical perspectives embody both a certain way of understanding 'what is' and 'what it means to know' (Crotty, 1998). One theoretical perspective can inform several methodologies and several competing schools of thought exist (Hussey and Hussey, 1997; Marshall and Rossman 1995; Easterby-Smith *et al.*, 2002; 1991). Nevertheless, this research discusses only the positivist and interpretivist/phenomenological paradigms. The justification of the selection of the interpretive/phenomenological paradigm for this study is made the end of Section 4.2.3.

4.2.1 The Positivist Paradigm

Ideas associated with positivism have been developed and challenged, stated and re-examined over time (Crossan, 2003). This philosophical position is rooted in the natural sciences which study elements of the natural world and is also held within the social sciences which focus on human activities (Cavana *et al.*, 2001; Marshall and Rossman 1995). Various advocates of positivism have placed emphasis on different aspects (Crossan (2003). For example earlier positivists suggested that all real knowledge should be derived from human observations of objective reality i.e. empiricism (Gray, 2004; Crossan, 2003; Crotty 1998; Williams and May, 1996). Then logical positivists went further to introduce the verification principle whereby no statement is meaningful unless it is capable of being verified (Crotty, 1998; Williams and May 1996). The aim was to rid scientific knowledge of speculative and subjective viewpoints and to establish generalisations and laws (Crotty, 1998).

Overall, the following are worth noting about positivism in general. The ontological assumption is that reality exists externally or separate from the individual who observes it (Weber, 2004; Gray, 2004; Klein and Myers, 1999; Crotty, 1998; Hussey and Hussey, 1997; Oslon 1995). It is assumed that because an objective reality exists independent of human behaviour, it is therefore not a creation of the human mind (Wolfer 1993; Poole and Jones 1996; Crossan, 2003). It is this assumption of the subject and object being two separate independent things that makes this ontology dualistic in nature (Weber, 2004; Klein and Myers, 1999).

Epistemologically, positivism is objectivist as it holds that truth and meaning reside in objects independent of any consciousness (Weber, 2004; Crotty, 1998; Easterby-Smith *et al.*, 1997). Positivists argue that it is possible to attain objective knowledge of reality and that only knowledge which is observable is in fact valid (Gray, 2004; Crotty, 1998;

Easterby-Smith *et al.*, 1997; Held, 1990). As it is assumed that things can be studied as hard facts and the relationship established as universal scientific laws, positivists believe that these laws can be used to predict general systems of human activity (Cavana *et al.*, 2001; Smith, 1998).

Positivists seek facts or causes of social phenomena, with little regard to the subjective state of the individual through the application of logical reasoning (Hussey and Hussey, 1997). The researcher is therefore expected to be value-neutral and detached in order to ensure total objectivity during data gathering and analysis (Gray, 2004; Cavan *et al.*, 2000; Klein and Myers, 1999; Easterby-Smith *et al.*, 1991; Guba 1990).

According to positivists, because the world exists externally, its properties should be measured through objective methods (Easterby-Smith *et al.*, 2002). As such, positivistic research is usually associated with quantitative and experimental methods to test hypothetical-deductive generalisations (Amaratunga, *et al.*, 2002; Cavana *et al.*, 2001; Punch, 1998; Easterby-Smith *et al.*, 1991). This brings together the positivistic paradigm with quantitative methods as these methods essentially utilise numerical evidence (Easterby-Smith *et al.*, 2002). Still, although positivism has influenced quantitative methods, the relationship between the two is not to be taken as a law or given (Knox, 2004). As further discussed in Section 4.3, not all quantitative research is positivist (Punch, 1998).

For positivists, the universal laws generated have the status of truth. To this extent, positivism adopts a correspondence view of truth whereby true statements are taken to correspond with the knowable facts of reality (Weber, 2004; Clarke, 1998). Phenomena such as meaning and experiences are not within the scope of positivism (Clarke, 1998; Greene, 1979). As positivists perceive the world to be measurable, controllable and explainable, they strive to collect data that are true measures of reality or phenomena (Weber, 2004; Easterby-Smith *et al.*, 2002; Klein and Myers, 1999; Hussey and Hussey, 1997). This aspect indicates the validity of their research.

The positivist paradigm aims to reduce phenomena in systems to simple and easily identifiable elements that are capable of replication later (Punch, 1998; Easterby-Smith *et al.*, 1991). They believe that research is reliable if the results can be replicated (Weber, 2004). Here we see that the hallmark of positivist is replicability that is; another researcher should be able to do the same research in the same way and come up with comparable results (Weber, 2004; Cavana *et al.*, 2001; Hussey and Hussey, 1997). In summary, the two key assumptions of positivism are that reality is objective and that for knowledge to be

significant, it has to be based on observation of this external reality (Gray, 2004; Punch, 1998; Easterby-Smith *et al.*, 1991).

Several authors have highlighted the criticisms of positivism and its underlying assumptions. The notion that the observer / researcher and the observed / object can be independent has been challenged (Clark, 1999; Crotty, 1998; Lincoln and Guba, 1985). It is argued that every research has an element of subjectivity and thus absolute objectivity is impossible (Strauss and Corbin, 1998). Another criticism is that people, who are the subject of social research should be treated as humans rather than as mere objects as positivism infers (Remenyi *et al.*, 1998). The assumption that all people share the same meaning system or patterns of convention is questioned (Cavan *et al.*, 2001). Central to the argument is that because people have the ability to think, argue and experience events in idiosyncratic ways, positivistic strategies are unable to provide a detailed understanding of these humanly dimensions (Remenyi *et al.*, 1998).

The argument that the world exists externally and its properties should be measured through objective methods and only knowledge which is observable is valid, is challenged by some for being narrow-focussed and dismissive of other paradigms (Crotty, 1998; Lincoln and Guba, 1990). Critics contend that it is not possible to accurately know reality and discover universal truths and laws (Clark, 1999). The main aspects of positivism which have been criticised are summarised in Figure 4.1

Aside from the extreme positivistic stance, a new philosophy of post-positivism emerged based mainly on the works of scholars such as Popper (1959), Bronowski (1956), and Kuhn (1970) (Crossan, 2003; Clarke 1998). Post-positivism, a “modified” version of positivism is equally a broad category with variations. Without necessarily rejecting the objectivism inherent in positivism, some scientists and philosophers have challenged its claims to objectivity, precision and certitude leading to an understanding of scientific knowledge whose claims are far more modest (Crotty, 1998; Guba and Lincoln, 1990).

For Popper, falsification, that is, the disproving of theories and laws was much more useful than verification as it provided more purposeful research questions and practices (Easterby-Smith *et al.*, 1997). He argued that although theories can be conclusively falsified, they can never be conclusively verified (Williams and May, 1996). At the same time, because of their speculative nature, theories remain conjectures and open to refutation (Williams and May, 1996). Similarly, Kuhn argued that we are never in a position to prove the universality of findings as history shows (Clarke, 1998).

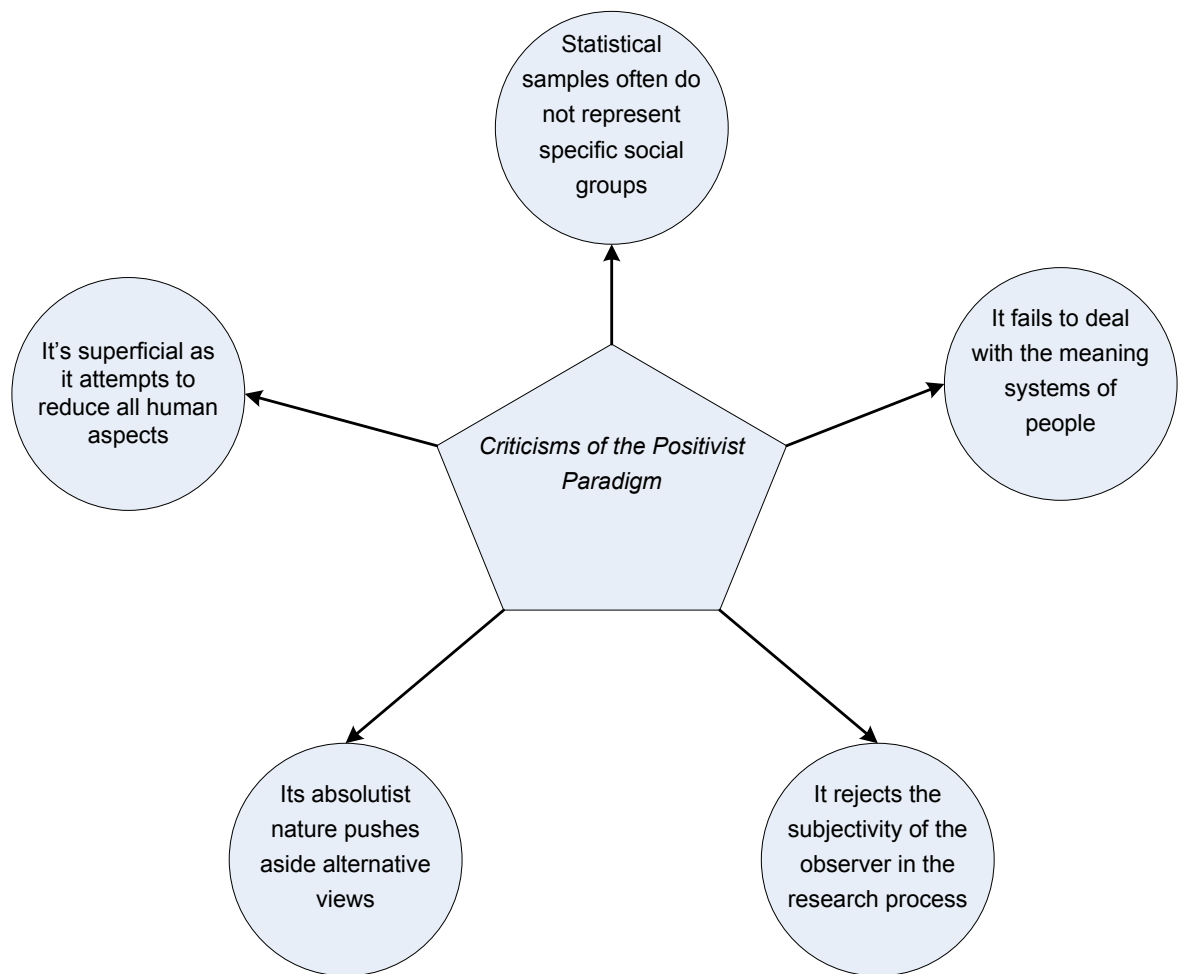


Figure 4.1 Main criticisms of positivism

Post-positivism also challenges the notion that observer and the observed are independent and that in some cases many of the so called facts that serve as elements of theories (e.g. particles, waves,) are not directly observed at all but quite purposefully controlled and introduced as mere heuristics and explanatory devices (Stahl, 2003; Crotty, 1998; Lincoln and Guba, 1990). It equally recognises the need for rigour, precision, logical reasoning and attention to evidence but unlike positivism, this is not confined to only what can be physically observed (Lincoln and Guba 1998; Lincoln and Guba 1990). As a result, Clarke writes that post-positivism “does not reject the truths present in methodologies focussing on the experiences or meanings of individuals as encompassed by ... interpretive methodologies” (1998:1245).

4.2.2 The Interpretivist Paradigm

Interpretivism arose in contradiction to positivism through attempts to understand and explain human and social reality (Crotty, 1998). It is a philosophical position held largely in social sciences (Marshall and Rossman 1995). The interpretive paradigm refers to social science collective approaches that prioritise the meanings and actions of agents

(Williams and May, 1996). It encompasses many perspectives such as hermeneutics, symbolic interactionism and phenomenology.

However, the theoretical perspective that is contrasted with positivism the most is phenomenology. Some authors prefer to use interpretive rather than phenomenology to avoid confusion with a methodology also called phenomenology (Hussey and Hussey, 1997). While this thesis mainly uses the term interpretive, phenomenology is also used synonymously seeing that it sits on the extreme end of the continuum. It must also be mentioned that in practice, no paradigm is used in its pure form and the dividing lines are blurred (Hussey and Hussey, 1997).

The interpretive paradigm builds on the social construction of reality (Stahl, 2003). Its ontological assumption is that the world is largely what people perceive it to be and reality is therefore socially constructed (Cavana *et al.*, 2001; Lincoln and Guba, 2000; Oslon, 1995). The reality and individual cannot be separated, making reality inter-subjective (Weber, 2004). Constructionism and interpretive/phenomenology are very intertwined (Crotty, 1998). The interpretive perspective looks for culturally derived and historically situated interpretations of social life (Crotty, 1998). Phenomenology in particular assumes that knowledge is built through social construction of the world which is subjective (Marshall and Rossman 1995, Easterby-Smith *et al.*, 1997).

To contrast with positivist research which assumes that all people share the same meaning systems, interpretive research believes that meaning systems or patterns of conventions are created out of social interaction between people (Cavana *et al.*, 2001; Hussey and Hussey, 1997). People experience physical and social reality in different ways and hence try to make sense of the world in different ways (Weber, 2004; Cavana *et al.*, 2001).

The interpretivist/phenomenological paradigm is more appropriate in understanding processes or the significance people attach to meaning and structures of their lives and for connecting these meanings to the social world around them (Easterby-Smith *et al.*, 2002; 1991; Klein and Myers, 1999; Hussey and Hussey, 1997). Interpretivists argue that the researcher cannot remain objective during the study because they deal with action and behaviour which are generated within the human mind (Easterby-Smith *et al.*, 1991). The researcher becomes the primary data gathering instrument and cannot remain valueless from either previous knowledge or that acquired during the research process (Easterby-Smith *et al.*, 2002; 1991). Inevitably, the researcher will interpret the data in a fairly subjective manner. The researcher's involvement with individual subjects allows

them to uncover the socially constructed meaning as it is understood by an individual or a group of individuals (Cavana *et al.*, 2001).

From the interpretive perspective, research presents a 'rich' and complex description of how people think, react and feel under certain context-specific situations (Cavana *et al.* 2001; Hussey and Hussey, 1997). Phenomenology typically uses qualitative and naturalist approaches to inductively and holistically understand human experiences (Amaratunga *et al.*, 2002; Easterby-Smith *et al.*, 1991). It encourages research approaches that can adjust to new issues and ideas as they emerge and contribute to theory generation (Hussey and Hussey, 1997). It also traditionally tends to favour methods that collect "rich" data and perceptions while focusing the analysis on interpretation or underlying meaning rather than statistical manipulation (Cresswell, 1998; Easterby-Smith *et al.*, 1991).

The interpretivist/phenomenological paradigm attempts to understand and explain a phenomenon rather than search for external causes or general predictive laws (Cavan *et al.*, 2003; Easterby-Smith *et al.*, 1991). It considers what is happening in a system to be complex and fluid considering that it views reality and knowledge to be socially constructed. In other words, positivism seeks to simplify complex phenomena by isolating variables, whilst phenomenology seeks to embrace that complexity.

The interpretive paradigm is criticised for being too subjective, for ignoring that not all aspects of reality are socially constructed and for focussing on local micro level events (Webber, 2004; Cavana *et al.*, 2001; Lenard *et al.*, 1997). Based on various sources, this research acknowledges that both the positivist and interpretivist/phenomenological paradigms have inadequacies and implications for social research as summarised in Table 4.1.

Differences in ontological and epistemological assumptions mean that interpretivists define validity differently from positivists using terms such as credibility, transferability and confirmability (Weber, 2004). Both positivist and interpretive paradigms "have substantial value and contrary to the current rhetoric ... deep similarities rather than deep differences underlie them" (Weber, 2004:iv) This contrasts with the positivist view which holds that only knowledge obtained from objective measure is significant (Easterby-Smith *et al.*, 1991;1997; 2002). From a "non-naive" constructionist view point, the positivist claim can be seen as only one aspect or dimension of reality (Crossan, 2003).

Table 4.1 Implications of the Positivist and Interpretivist Paradigms

Assumptions on	Positivism	Interpretivism
Ontology	Researcher and reality are separate.	Researcher and reality are inseparable.
Epistemology	Objective knowledge of reality exists beyond the human mind.	Knowledge of the world is socially constructed through a person's lived experience.
Research Object	Has inherent qualities that exist independently of the researcher. Known variables.	Is interpreted in light of meaning structure of researcher's lived experience. Unknown variables
Stance of Researcher	Distant from research subjects in order to maintain objectivity. Science is value free.	Fully involved with research subjects to achieve understanding of subjects' world. Part of what is observed. Science is driven by human interests.
Research Aim / Purpose	Discover universal laws that can be used to predict human activity. Reduce phenomena to simplest elements. Formulate hypotheses and test them.	Uncover the socially constructed meaning of reality as understood by an individual or group. Look at the totality of each situation. Develop theories through induction from data.
Research Design	Linear and rigid. Context-free	Flexible and emergent. Context-bound
Preferred methods & types of analysis	Operationalising concepts to be measured. Seeks large amounts of empirical data for statistical analysis.	Multiple methods to establish different views of phenomena. Small samples investigated in depth. Content analysis and theme identification.
Methods of results dissemination	Numbers, statistics, aggregates, formal voice, scientific style.	Words, narratives, individual quotes, personal voice, literary style.
Theory of Truth	Correspondence theory of truth: one-to-one mapping between research statements and reality.	Truth as intentional fulfilment: interpretations of research object match lived experience of object.
Validity	Certainty: Data truly measures reality.	Defensible knowledge claims.
Reliability	Replicability: research results can be reproduced.	Interpretive awareness: researchers recognise and address implications of their subjectivity.

Source: Weber, 2004; Cavana *et al.*, 2001; Easterby-Smith *et al.*, 2002

4.2.3 Selecting an Appropriate Theoretical Perspective.

Research in construction management has traditionally been influenced by the positivist philosophy. However, since the 1990s, some scholars have argued strongly against the monopolistic dominance of a positivist paradigm (Seymour *et al.*, 1997; Root *et al.*, 1997). They have called for consideration of other paradigms particularly the interpretive approach (Seymour *et al.*, 1997). The arguments about the shortcomings of the positivistic

paradigm have echoed those in social sciences. In construction management the methodological debate has yielded mixed responses, a few of which are highlighted below.

Some have criticised Seymour *et al.* (1997) for their narrow focus of interpretive approach (Wing *et al.*, 1998). In support of positivism, Harris (1998) argues that all observation is theory dependent whether we are aware of theories or not. Likewise, Runeson strongly defends positivistic research claiming that it "... is our best insurance against bad research" and "currently offers the best way to reduce subjectivity" (1997:299).

Despite the above argument, Runeson (1997) recognises a role for interpretive research primarily in building new theories, modifying existing theories and deriving alternative hypotheses that can later be tested through 'conventional' methods. Surprisingly though, whilst recognising that there is room for both paradigms, Runeson makes a claim that positivist methods of theory building have already been modified sufficiently to cope with the demands of management research, a claim Seymour *et al.* (1998) refute.

Seymour *et al.* (1998) equally refute Runeson (1997)'s contention that positivism provides insurance against bad research because there will always be bad research. They stress that the study of meaning through interpretive approaches does not deny the possibility of causal explanations in social life but rather prefer that such explanations be seen as "subsidiary and partial" (Seymour *et al.*, 1998:112). Their assertion bodes well with the interpretive perspective which sees causal relationships as simply another possible construction or way of looking at certain aspects of the social world one is studying.

Notwithstanding that the interpretivist paradigm acknowledges the existence of the positivist paradigm, some authors have argued explicitly for a mix of approaches (Wing *et al.*, 1998; Raftery, McGeorge and Walter, 1997; Lenard *et al.*, 1997). Raftery, *et al.* (1997) note that advocating for one 'methodology' over another is "divisive and dangerous", arguing for the breaking up of methodological monopolies and embracing a multi-paradigmatic development. They continue that most research in construction management is undertaken within a positivist/rationalist paradigm, but the adoption of one paradigm as being inherently better than another should not be allowed. This is because the field of construction research is very diverse. Raftery *et al.* (1997) support the triangulation approach claiming that one cannot say that only one of the paradigms has more potential to address real world problems because of their different ontological and epistemological orientations. They point out that interpretive approaches have a contribution to make especially with the thrust of modern management research moving

towards user and stakeholders' participation in the building procurement process (Raftery *et al.*, 1997).

Similarly, Wing *et al.* (1998) admit that it is difficult to argue in favour of any single approach as being applicable to all management research based purely on epistemological grounds as what constitutes knowledge remains an unresolved philosophical issue. On one hand, they make a case for positivism by alleging that most of construction management research deals with practical problems which involve formulation of hypotheses that can be tested and generalised. On the other, they state that they do not deny the value of the interpretive approach as it may be more suitable for certain types of problems. Their examples include, identifying problems and articulating or conceptualising them more clearly for subsequent theorising and further investigation. They suggest a methodological pluralism and paradigm diversity as the way forward for research in construction management (Wing *et al.*, 1998).

Since the 1990s, there has been a growing body of phenomenological research in the construction management literature. Examples include the works of; Moore (2006); Wood (2006); Akintoye *et al.*, (2004); Hachmann (2004); Dainty *et al.*, (2000); Root (2000); Green (1999) and Loosemore (1997). While there has been substantial development, there is as yet no general consensus on what the dominant research paradigm in construction should be or indeed whether there should be one. However, going by the debates and the various types of research studies being undertaken, there is consensus that both paradigms have an important role to play depending on the nature of the research problem and the knowledge to be researched (Wing *et al.*, 1998; Hughes, 1997). Both attempt in their own different ways to build knowledge in a rigorous and scientific way (Lenard *et al.*, 1997).

There is no one paradigm that is inherently suitable to address all construction management problems; each perspective is relevant under different conditions (Wing *et al.*, 1998). From a constructionist viewpoint, Mir and Watkinson, (2000) contend that the theoretical position held by the researcher determines what gets constructed as the research problem, the procedures used and what constitutes observations and evidence. This research concurs with Seale (1999) that paradigmatic debates should be understood as resources for thinking and developing methodological awareness, rather than taken as problems or disputes to be solved by the researcher. A crucial point that the Seale makes is that the researcher must understand the competing conceptions about basic matters such as nature of the social world and how we may know it, and take a position and learn valuable lessons from each (Seale, 1999).

The goal of the phenomenological perspective in construction management is the development of theories through explanatory methods rather than creation of generalisations or theory verification (Amaratunga *et al.*, 2000). The characteristics of the research problem identified require understanding how construction firms respond to preferential procurement and why they are responding in the way that they do. It is aimed at theory building. A phenomenological position is more appropriate for this research because it aims at identifying phenomena through investigating how they are perceived by the actors in a situation. The perspective is essential for understanding subjective experiences and for gaining insights into people's motivations and actions (Easterby-Smith *et al.*, 2002; 1991). This is because of its particular focus on personal perspective and interpretation.

The chosen paradigm has the advantage of describing, explaining, and understanding the behaviour of contractors and their perceptions of preferential procurement policies. One of its important attributes is that it has the potential to uncover and answer questions which may not originally have been envisaged by the researcher. Clearly, phenomenology is informed by the *becoming* ontology discussed earlier. It provides much better accounts of behaviour embedded in practice or situated in a particular context for theory building. The positivist paradigm with its underlying assumptions is less appropriate for this research. However, this is not to minimise the importance of rigorous testing of existing theories that can be achieved with positivism (Parkhe, 1993).

Besides informing the methodology, a theoretical perspective also provides a context for the process and grounding its logic and criteria (Crotty, 1998). Consequently, the research strategy for this research discussed in the next section reflects fundamentally phenomenological underpinnings.

4.3 RESEARCH METHODOLOGY

Research methodology refers to the "overall approach, strategy or plan of action or design lying behind the choice and use of particular methods and linking the choice and use of methods to the desired outcome" (Crotty, 1998:3). Methodology is concerned with: why data should be collected, what data, from where, when, how, by whom, and how should data be analysed (Fellows and Liu, 2003; 1997; Hussey and Hussey, 1997). It refers to the ways in which we inquire into the world in order to build knowledge about it: how can the researcher go about finding out knowledge? (Punch, 1998; Guba and Lincoln, 1994).

Methodologies develop from the researcher's ontological and epistemological stances and thus explicitly or implicitly hold a view about social reality (Williams and May, 1996; Oslon, 1995). Arguably, different research methodologies have different approaches to data

collection and analysis. Each methodology also has its own disadvantages and advantages. However, methodologies must not be chosen arbitrarily as each brings with it ontological and epistemological assumptions (Easterby-Smith *et al.*, 2002; 1991).

However, there is no uniquely best research methodology except that some will be more useful than others to investigate a particular problem (Amaratunga *et al.*, 2002; Remenyi *et al.*, 1998). Some methodologies are more compatible with positivism with room for interpretation (e.g. laboratory experiments and simulation and stochastic modelling); some are more compatible with interpretivism (e.g. action research and in-depth surveys) and others have scope to be either (e.g. case studies or field experiments) (Amaratunga, *et al.*, 2002; Lin, 1998; Remenyi *et al.*, 1998). Crotty suggests that many methodologies known today as forms of qualitative research (inferring interpretivism), have in the past been carried out in “an utterly empiricist positivist manner”, citing ethnography as a good example (1998:15). The differences in methodologies are therefore mainly a matter of emphasis rather than material (Oslo, 1995).

Many factors influence the choice of the methodology. According to Yin (1994), the choice of the research strategy should be a function of the research situation. For Denzin and Lincoln, (1994), the choice depends not only on the context of the study and nature of research questions but also on the researcher’s experience, understanding of philosophy and personal beliefs. Shih (1998) provides a more comprehensive list of factors including the philosophical paradigm, goal of research, nature of the phenomenon being studied, the level and nature of research questions and practical considerations related to the research environment and the efficient use of resources as being influential in the choice of methods adopted.

In addition, there are overlapping areas among different methodologies and some research may require a combination (Neuman; 2000; Babbie, 1995; Yin, 1994). Whatever the choice, the most important thing is that the methodology or methodologies chosen and the desired outcomes must be compatible.

4.3.1 Selecting Grounded Theory Approach for the Research

Knox (2004) argues that many authors place induction and deduction at either end of a spectrum, just as they have placed qualitative and quantitative at the same polar extremes. The concept of a polar opposite is encouraged by some authors such as Saunders *et al.* (2003) by linking the paradigm of positivism with different approaches, particularly with deduction and interpretivism with induction. The deductive approach is where one develops a hypothesis and designs a research strategy to test the hypothesis

in terms of data obtained and inductive approach is where one collects data and develops theory as a result of data analysis (Welman *et al.*, 2005; Saunders *et al.*, 2003).

Deduction begins with one or more statements that are accepted as true that may be used to conclude to one logical true statement (Welman *et al.*, 2005). Induction begins with an individual case or cases and then proceeds to a general theory in order to generalise to all cases based on the conclusions reached from observing one or more cases (Welman *et al.*, 2005). In spite the categorisation, both inductive and deductive approaches can be used in the same research as the case is in grounded theory initially introduced by Glaser and Strauss (1967).

An Overview of Grounded Theory Approach

Relative to other methodologies such as surveys, grounded theory is still in its infancy. The original intention of grounded theory approach by Glaser and Strauss (1967) was a methodology for sociologists (Goulding, 1998). The founders have over the years diverged in their opinions on fundamental philosophical and procedural issues of the methodology (Goulding, 1998). This has resulted in two key approaches to grounded theory: the classic approach, advocated by Glaser and the more contemporary Strauss and Corbin approach. The classic version has a more open approach to data collection and is less structured while that of Strauss and Corbin has a more structured approach to data collection and analysis (Strauss and Corbin, 1998; 1990). For this reason, the latter approach was found to be more appropriate for the current research. Compared to the classic approach, it is also more in line with the constructivist epistemology.

In recent years, grounded theory has been applied across a number of disciplines such as social work, health studies, psychology and more recently management (Goulding, 1998). This has resulted in the adaptation of the methodology “in ways that may not be completely congruent with all the original principles” (Goulding, 1998:53). Within ‘contemporary’ grounded theory, it is acceptable and even recommended that a researcher should have a theoretical perspective during the research from which to analyse the data and/or build the theory (O’Callaghan, 1996). The onus is on the researcher to decide at what stage theoretical ideas should be brought into the research but, without imposing them on the data (Mason, 1996). Grounded theory is in a state of evolution and flux. In construction management research, for example, one significant difference in the use of grounded theory approach is reflected in the way some authors provide propositions at the beginning (e.g. Loosemore, 1999) and others do not or develop one at the end of the study (e.g. Akintoye *et al.*, 2004; Dainty *et al.*, 2000).

Despite the differences, there are some elements which remain fundamental. These include, the requirement of a researcher to remain open to essential provisional character of emerging theory, focussing on search for meaning and understanding to build innovative theory not universal laws, use of methods where close inspection of the data extends theory through theoretical sampling and a process of coding strategies (O'Callaghan, 1996).

This research takes a social constructionist view and application of grounded theory which sees knowledge as actively and socially constructed with a focus on how people behave within an individual and social context (Goulding, 1998). The constructionist view acknowledges that outcomes result from social interactions, negotiations and power and also that in grounded theory, the researcher constructs the theory from data (Charmaz, 1993). This perspective is particularly suited for this research because it "facilitates the studying of issues such as how strategies are formed, communicated, implemented and understood in complex organisations which are buffeted by myriad historical and institutional forces" (Mir and Watson, 2001:1173). From this perspective, the 'discovery' of a theory is treated as a social construct of the situation by the researcher as opposed to 'pure' discovery as an objectivist would view it.

Grounded theory is both a research strategy and a method i.e. way of analysing data (Punch, 1998; Hussey and Hussey, 1997). The purpose of grounded theory approach is to derive theory systematically from data through research process, meaning that theory will be grounded in such a continual reference to data (Goulding, 1998; Cresswell, 1998; Punch, 1998; Hussey and Hussey, 1997; Strauss and Corbin, 1990). Although grounded theory stresses induction in developing the theory, deduction will also often be necessary (Cresswell, 1998; Punch, 1998; Strauss and Corbin, 1990). Grounded theory is "an iterative process which includes elements of both induction and deduction" (Bryman and Bell, 2003:12).

Grounded theory aims at developing, generating or 'discovering' a theory, which is an abstract analytical schema of a phenomenon that relates to a particular situation (Strauss and Corbin, 1990; Cresswell, 1998). This situation is one in which individuals interact, take actions or engage in a process in response to a phenomenon. One of the aims of grounded theory is to identify perspectives of various groups of people involved in a setting (Strauss and Corbin, 1998). Therefore, a multiple perspective, such as the triadic framework developed in this research is justified. During data analysis, caution was taken to allow the substance to emerge from the data as much as possible and rather than being forced upon it as described in section 4.6.2. The grounded theory research design is an evolving one as the study progresses in contrast to a structured or pre-designed one

required within a positivist paradigm. Grounded theory approach is able to deal with the complexity of social phenomenon, particularly investigating processes (Punch, 1998).

The outcome of a grounded theory study is a substantive low level theory closely related to the phenomenon being studied (Cresswell, 1998; Strauss and Corbin, 1990). There is no standard way of presenting the grounded theory (Partington, 2002; Goulding, 1998; Mason, 1996). However, a common practice is that the theories are articulated, usually towards the end of a study, as narrative statements, fine grained descriptions, abstract models or frameworks, concepts and theoretical propositions or hypotheses or a combination (Partington, 2002; Cresswell, 1998).

A grounded theory approach is most appropriate in instances where no satisfactory theory exists on a topic or where there is an inadequate understanding of a phenomenon to begin theorising about it or when there is a need to look at an old situation afresh to learn more about it (Punch, 1998; Goulding, 1998; Charmaz, 1993). The characteristics of the research problem identified are discussed below.

Characteristics of the Research Problem

Firstly, the research problem stems from an interaction of developments in construction industry practice and evolving institutional frameworks whereby a traditional hypothesis approach is less appropriate. Specifically, the concept of preferential procurement in the literature is a contested concept with varying positions driven by different and often incompatible theoretical assumptions. Therefore no coherent generic theoretical framework guiding practice in the industry is identifiable.

Secondly, the influence of preferential procurement policies on construction firms and how their responses shape both industry development and the realisation of government's socio-economic objectives is not understood in any detail. The research problem is, to a large extent, embedded in industry practice and experience. A grounded theory approach has the ability to accommodate the local groundedness of the phenomena being studied and specific cases embedded in their context (Strauss and Corbin, 1998; Cresswell, 1998; Punch, 1998).

Thirdly, whilst the attempt to use public procurement as a medium for delivering socio-economic objectives is not new to RSA, the contextualised bound nature of the study is critical. As such, it needs to be looked at afresh in order to learn more about how preferential policies impact on the construction industry. A grounded theory approach may shed more light on how policies and practices have changed over time to reflect the challenges and experiences of both government and industry. To appreciate fully what is happening and the changes taking place in the industry together with their implications,

empirical research, much of it qualitative, is needed to contribute to the grounding of concepts in the face of an evolving institutional environment. Grounded theory is most appropriate because it concentrates on generating concepts, hypothesis and themes.

Finally, one of the advantages of grounded theory is that is relatively flexible and can be easily modified as the study progresses. As this research was largely exploratory in nature, there was a need to allow for unexpected developments that could arise as part of the study such as access to data and policy changes. As noted by Root (2000), grounded theory approach allows for feedback in the research process, thereby making it a more useful methodological framework for this research. The overall research design for this study is illustrated in Figure 4.2. Having chosen grounded theory approach as the appropriate research methodology for this study, the next section discusses the research methods employed

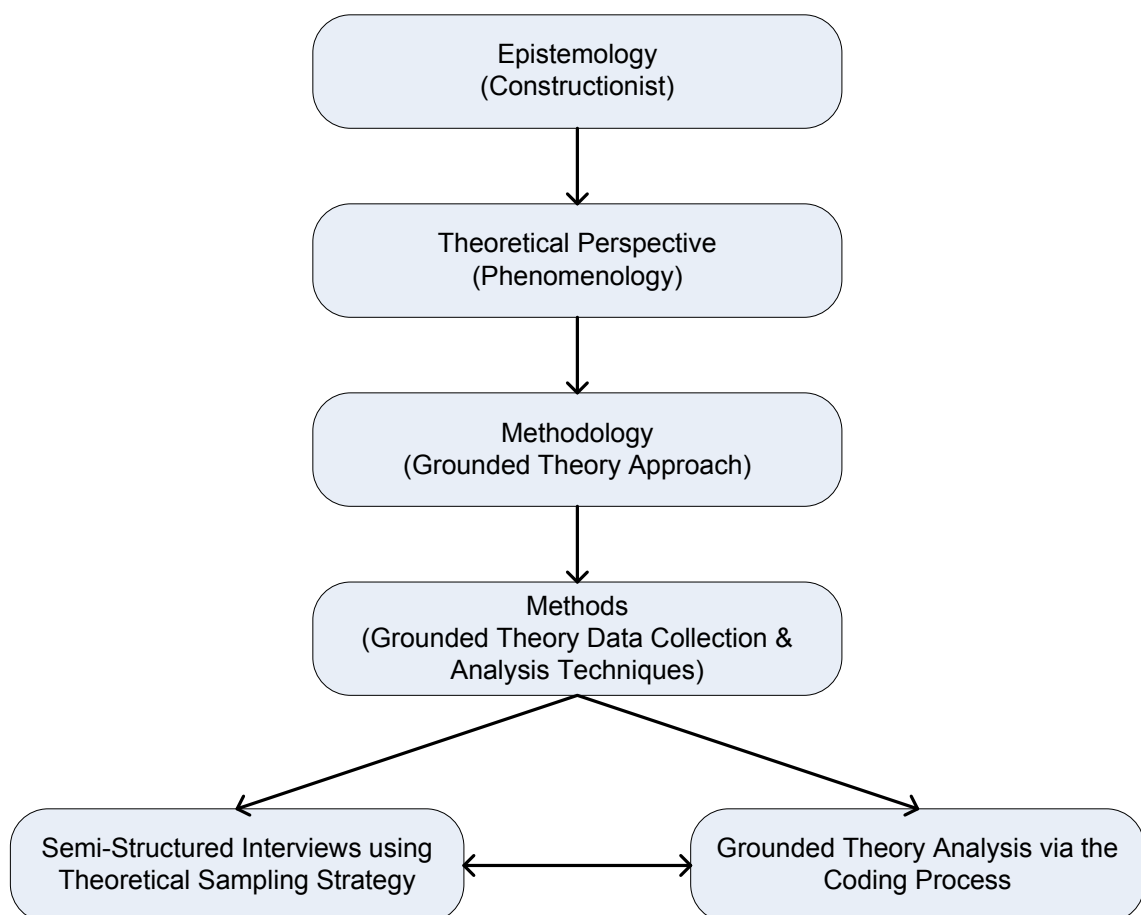


Figure 4.2 Methodological Approach

4.4 RESEARCH METHODS

Research methods refer to the techniques or procedures used to gather and analyse data (Crotty, 1998; Punch, 1998; Hussey and Hussey, 1997). In fact, data collection and data analysis are the empirical procedures for the research (Punch, 1998). Data refers to known facts or things used as inferences or reckoning (Hussey and Hussey, 1997). Data can either be qualitative or quantitative and primary or secondary (Hair *et al.*, 2006; Watkins, 2006; Welmen *et al.*, 2005). These descriptions are as tabulated in Table 4.2

A combination of qualitative and quantitative and primary and secondary data is always used whether the research is following a broadly positivist or phenomenological paradigm. According to Hussey and Hussey, (1997), the balance is determined by the analytical requirement and overall purpose of the research.

A wide range of research methods are available to a researcher. The choice depends on, and evolves from the research problems and questions (Easterby-Smith *et al.*, 2002; 1991; Neuman, 2000; Holt, 1998; Babbie, 1995).

Table 4.2 Types and Characteristics of Data

Type: Qualitative Data	Quantitative Data
<ul style="list-style-type: none">• Concerned with qualities and non-numerical characteristics.• Used to illicit meanings and experiences related to the phenomenon.• Difficult to measure, count or express in numerical terms.• Useful in providing in-depth information on a few characteristics and unearthing hidden motivations and values.	<ul style="list-style-type: none">• Concerned with quantities and numerical form.• Used to measure variables or count occurrences of a phenomenon.• Lends itself to statistical analysis.• Useful in testing.
Type: Primary Data	Secondary Data
<ul style="list-style-type: none">• Collected for the first time by the researcher.	<ul style="list-style-type: none">• Existing data collected for other research.

As with methodologies, research methods are not neutral but embody implicit assumptions of what the social world is or should be like, and what counts as knowledge and how to get it (Punch, 1998). By virtue of adopting particular methods, “assumptions about philosophical aspects are made ... as different research methods may share or greatly differ in their philosophical conceptualisations of truth” (Clarke, 1998:1242).

Knox (2004) puts forward the idea that the concept of philosophical pluralism and methodological pluralism tries to identify that a method does not select a theory but that there is an ‘elective affinity’ between a theory and a method. This means that one’s ontology and epistemology lend themselves to certain research approaches and methods

(Knox, 2004). For example, if one thinks that the social world is constructed, they can not logically employ methods that assume an external reality. Typically, quantitative methods are associated with the positivist paradigm and qualitative methods with the interpretive/phenomenological paradigm (Punch, 1998; Hussey and Hussey, 1997; Strauss and Corbin, 1990).

However, as Knox, (2004) argues, while methods and their use are influenced by philosophical arguments, these methods are not fundamentally applicable to any one or particular argument. That is to say, even methods that are currently viewed and connected to one epistemological stance are not exclusively tied and so should not necessarily constrain the methods to be chosen (Knox, 2004). Provided it suits the purpose, any theoretical perspective could make use of any of the methodologies and any methodologies could make use of any method (Crotty, 1998). Methodological pluralism is acceptable but epistemological pluralism is questionable because it is difficult to attempt to be at once epistemologically objectivist and constructionist (or subjectivist) (Knox, 2004; Crotty, 1998).

It is at the level of methods not the epistemological or theoretical perspective that the distinction between qualitative and quantitative research really occurs (Crotty, 1998). While literature provides a plethora of distinguishing characteristics, qualitative and quantitative methods are not as diverse nor as mutually incompatible as is often conveyed by the literature (Watkins, 2006; Clarke, 1998; Lenard, *et al.*, 1997).

In practice, there are no distinct differences in the methods used by researchers (Watkins, 2006; Easterby-Smith *et al.*, 2002; 1991). For instance, methods such as case studies and interviews are used in both qualitative and quantitative research and within positivist and interpretivist paradigms (Webber, 2004). It is argued that strict alignment of methods with particular paradigms may not be as accurate or even useful for the researcher in choosing the most appropriate method to use in a given situation (Knox, 2004; Sanders, Lewis *et al.*, 2003; Clarke, 1998).

Contrary to popular belief, a quantitative piece of work can be offered in an interpretivist manner and likewise there is plenty of scope for qualitative research to be situated in an overall positivist setting (Lin, 1998; Crotty, 1998; Remenyi *et al.*, 1991). It is possible for either qualitative methods or quantitative methods or both to serve the purpose depending on one's research question (Knox, 2004; Crotty 1998; Lenard *et al.*, 1997).

In Lin's view, the distinction lies in the questions one asks of the data and the types of conclusions one wishes to draw (Lin, 1998). For others, it is not the use of quantitative methods that turns work into positivism but the attribution of objectivity, validity and

generalisability to quantitative findings (Crotty, 1998; Remenyi *et al.*, 1998; Lenard *et al.*, 1997).

Inevitably, some research methods will be more appropriate in achieving the desired outcomes than others. It is therefore the responsibility of the researcher to eliminate as much as possible those methods that are less appropriate to answer a particular research question (Shakantu, 2004).

All methods used in collecting data and their measuring instruments have advantages and disadvantages and what may count as an advantage for one may turn out to be a disadvantage for another and vice versa (Welmen *et al.*, 2005). Therefore, the ability to blend methods appropriate for research is essential (Knox, 2004; Yin, 1994).

4.4.1 Data Collection Techniques

Sampling Strategy

There are two main types of sampling, random and purposive with each taking many forms (Naoum, 1998; Fellows and Liu, 1997).). Purposive sampling is commonly used in qualitative research. There many types of sampling techniques used in qualitative research as shown in Table 4.3.

Purposive sampling is a non-probabilistic strategy that selects informative subjects or units of observation as being representative of the wider phenomenon being studied (Neuman, 2000; Easterby-Smith *et al.*, 1991). It is sampling in a deliberate way with some focus or purpose in mind rather than arbitrarily (Punch, 1998) and is useful in exploratory research (Neumann, 2000). The research used theoretical sampling, a particular type of purposive sampling typically used in grounded theory approach (Strauss and Corbin, 1998; 1990).

Theoretical sampling is a process of data collection for generation of theory whereby the researcher jointly collects, codes and analyses data and decides what to collect next and where to find them in order to incrementally build a theory as it emerges (Punch, 1998).

The starting point for theoretical sampling in this research was two unstructured interviews with representatives from a public sector client organisation who shared general views on the topic from their experience and pointed out potential respondents. The researcher then also used the CIDB online contractor register to do a “stratified random” sampling of potential respondents during the initial stages of the fieldwork.

Theoretical sampling incorporates aspects of snowballing techniques aimed at strategically involving only informed subjects to contribute to theory generation. Through this technique, potential interviewees were identified by other interviewees and/or by

colleagues in their respective firms as the theory emerged. The method of sampling adopted fitted well with the rest of the research strategy and the research aims.

Table 4.3 Typology of Sampling Strategies in Qualitative Inquiry

Type of Sampling	Purpose
Maximum Variation	Documents diverse variations and identifies important common patterns
Homogeneous	Focuses, reduces, simplifies and facilitates group interviewing
Critical case	Permits logical generalisation and maximum application of information to other cases
Theory based	Find examples of a theoretical construct and thereby elaborate on and examine it
Confirming and disconfirming cases	Elaborate on initial analysis, seek exceptions, looking for variation
Snowball or chain	Identifies cases of interest from people who know people who know what cases are information-rich
Extreme or deviant case	Learn from highly unusual manifestations of the phenomenon of interest
Typical case	Highlights what is normal or average
Intensity	Information-rich cases that manifest the phenomenon intensely but not extremely
Politically important cases	Attracts desired attention or avoids attracting undesired attention
Random purposeful	Adds credibility to sample when potential purposeful sample is too large
Stratified purposeful	Illustrates subgroups and facilitates comparisons
Criterion	All cases that meet some criterion; useful for quality assurance
Opportunistic	Follow new leads; taking advantage of the unexpected
Combination or mixed	Triangulation, flexibility; meets multiple interests and needs
Convenience	Saves time, money and effort, but at the expense of information and credibility

Source: Miles and Huberman (1994:28)

Methods of Data Collection

The researcher's aim was to understand the research problem from the participants' perspectives and why they come to have the particular perspectives. As a result, the research used interviews as the main method of data collection and documentary evidence as a secondary (data triangulation). This is in keeping with grounded theory which allows for multiple data sources and where interviews play a central role (Cresswell, 1998; Goulding, 1998). Interviews are a method of collecting data in which selected participants are asked questions in order to find out what they know, do, think or feel (Naoum, 1998; Hussey and Hussey, 1997).

Interviews provide a good method of accessing people's perceptions, meaning, definitions of situations and construction of reality (Easterby-Smith *et al.*, 2002; 1991; Punch, 1998;). Their main advantage (say, over questionnaires) is their flexibility and adaptability to suit a wide variety of research situations (Welmen *et al.*, 2005; Easterby-Smith *et al.*, 2002; 1991; Punch, 1998). Moreover, the response rate is relatively higher than that of questionnaires or telephonic and postal surveys (Welmen *et al.*, 2005; Easterby-Smith *et al.*, 2002; 1991).

Notwithstanding their advantages, interviews are not only time consuming in both preparation and application but also often involve relatively high costs of travel (Welmen *et al.*, 2005; Easterby-Smith *et al.*, 2002; 1991). Naturally, personal interviews cannot be conducted anonymously where interviewees have been located by means of names and addresses (Welmen *et al.*, 2005; Easterby-Smith *et al.*, 2002; 1991). For this reason, some interviewees may provide those responses they think the interviewer expects of them rather than those that are accurate, particularly relating to opinions and attitudes (Welmen *et al.*, 2005; Easterby-Smith *et al.*, 2002; 1991).

Methods of Interviewing

Interviewing methods can be classified based on their degree of structure involved (Punch, 1998). The degree of structure may vary from structured to unstructured interviews with semi-structured interviews lying between these two extreme points as illustrated in Figure 4.3 (Welmen *et al.*, 2005; Punch, 1998; Naoum, 1998).

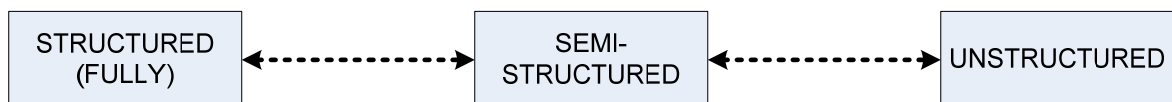


Figure 4.3 Variations in the Degree of Structure of Interviews

Source: Welmen *et al.*, 2005.

Structured interviews use a series of pre-established questions from an interview schedule, with pre-set response categories (Punch, 1998). Although open-ended questions may sometimes be included, there is little room for variations in responses and the interviewer is restricted to the same questions including their wording and order with little room for deviation (Welmen *et al.*, 2005; Punch, 1998; Naoum, 1998).

Unstructured interviews are informal and used to explore a general area of interest in depth whereby the interviewer only uses a list of topics or general questions that s/he wants to explore (Welmen *et al.*, 2005; Punch, 1998). The interviewee is given the opportunity to talk freely about events, behaviour and beliefs in relation to the topic. Specific questions emerge as the interview unfolds and there are no pre-established categories for responding (Welmen *et al.*, 2005; Naoum, 1998; Punch, 1998). Besides

having a higher chance of the interviewer displaying bias in the interview situation, unstructured interviews are time-consuming and costly because of their lack of guideline or structure (Welman *et al.*, 2005). They can take long, collect unnecessary data which may require repeat interviews and produce bulky unstructured data which may be difficult to analyse.

Semi-structured interviews use an interview guide which has a list of themes and questions to be covered, although these may vary from one interview to the next (Welman *et al.*, 2005; Naoum, 1998). Unlike structured interviews, some questions may or may not be used in particular interviews given the specific organisational context that is encountered in relation to the research topic (Welman *et al.*, 2005; Easterby-Smith *et al.*, 2002; 1991). The aspects to be explored including the order of the questions may change as the interviews progress (Welman *et al.*, 2005; Naoum, 1998).

Given the different types of interviews, the study chose a general interview guide using open-ended questions because of the diverse experiences of the respondents. The most appropriate type of interviewing method was semi-structured interviews. This interview type and method of interviewing, whilst providing some degree of structuredness allowed for interviewees' perceptions and constructs to be elicited (Punch, 1998). As the interview process ensued, other specific or more relevant questions emerged (See Appendices 4, 5 and 6).

The interviewer was able to adapt the formulation of questions in ways that fitted with the direction in which the interview was progressing. The interviews allowed the interviewer to record interviewees' first responses and subsequent changes, ensured that all questions were answered and by the interviewees themselves (Welman *et al.* 2005). Semi-structured interviews enabled the researcher to clarify any misunderstandings, to explain any unclear questions and to follow up incomplete and vague responses (Welman *et al.* 2005). A technique of 'mirroring back' was used to get the respondents to elaborate further or give examples (Babbie and Mouton, 2001). Therefore, the responses obtained were of a relatively high quality (Welman *et al.*, 2005).

The researcher was aware that data could be obtained rapidly and at lower cost through focus group interviews and the group situation could stimulate people in making explicit their views, perceptions, motives and reasons (Punch, 1998). Despite these advantages, the practicality of getting people together, possibility of inhibiting or intimidating responses from others, and problems associated with group dynamics discouraged their use (Welman *et al.*, 2005; Punch). More importantly, the researcher felt that interviewees would be more willing to participate in a one-to-one interview situation because of the

nature of the topic being investigated (Easterby-Smith *et al.*, 2002). Thus, the form of interviewing selected was the verbal face-to-face interchange with individuals.

Semi-structured interviews were supplemented by documentary evidence provided by respondents. These included official organisational reports, leaflets, pamphlets and Newspaper articles, showing among other things, the company profile, BEE strategies and other community involvement. It was essential to gather data on the same event or phenomenon in different ways to triangulate the sources of data. By using a mixed method approach to data collection, varied meanings and interpretations of events, actions and interactions could be obtained so that the researcher could build these variations into the substantive theory (Strauss and Corbin, 1998).

4.5 RESEARCH PROTOCOL AND ETHICAL CONSIDERATIONS

Data was collected through 33 face-to-face semi-structured interviews with 28 respondents from 26 construction firms and 5 respondents from 4 client organisations. A detailed description of the respondent profiles is given in chapter 5. Only three interviews had two respondents at the same time and only 1 respondent was interviewed in two different capacities, representing two different organisations respectively. The interviews collected data from multiple sources in order to optimise the research output. All interviews took place at the respondents' offices after obtaining access and explaining the purpose of the research. On average, each interview lasted between 30 to 90 minutes and only 2 lasted 30 minutes each. For the purpose of this research, the duration of the interviews enabled sufficient qualitative depth as the interview transcripts in Appendix 7 and volume 2 show.

The interview questions focussed on understanding the social processes and how the respondents managed the changes brought by a changing public procurement environment. The questions sought to explore the experiences, behaviours, opinions, beliefs, feelings, knowledge, and demographic/backgrounds of the respondents (Punch, 1998). Specifically, the interviews were essential in understanding what led the respondent to develop their conceptions of why certain strategies were adopted. The data collected was primarily qualitative.

Hesitations in answering questions were generally registered with several respondents such as laughing before answering some questions or saying "I might get in trouble here" before answering. About 5 respondents were not keen on having the discussions tape recorded, 2 of which allowed the recording to start mid-way into the discussion after establishing a rapport. These 'subtle' hints were construed by the researcher as reflecting the sensitivities associated with discussing preferential policies. In fact, 1 respondent

posed a question to this effect asking, *“how do you say this in a meeting what we have just told you? Will I be called a racist or a male chauvinist? You can’t say this in meetings...” (E).*

However, all the remaining interviews were taped using a digital tape recorder with the permission of the respondents. Tape recording provided a complete and accurate record of the interviews and enabled the interviewer to listen more attentively as the taking of notes was minimised (Rozakis, 2004; Partington, 2002). The recorded interviews also enabled the researcher to critically reflect on the interviewing style and improve the technique as the research progressed (Partington, 2002). The recorded interviews were downloaded to a computer and the researcher listened to the recordings several times in order to become thoroughly familiar with the data. Thereafter, the process of transcription by the researcher ensued in order to convert the data into a form to allow critical analysis.

Electronic versions of the transcripts were saved in files and folders with backup copies fully referenced. Hard copies were also printed out. Since there are no set guidelines on how detailed the transcripts should be, the selected convention largely depended on the purpose of the research. As the research was not concerned with discourse features, the transcripts were often imprecise in the linguistic sense (Open University, 1993). Overall, the transcription scheme used was accurate in relevant aspects and thus appropriate for this research. For purposes of discussing the results in Chapters 5 and 6, the selected verbatim quotations extracted from the transcripts were slightly edited for flow, for ease of reading but without changing their meaning (Partington, 2002). As there was a word limitation on the main text of the thesis (Volume 1) and to reduce the bulkiness of the document, all the transcripts were presented in volume 2. Appendix 7 shows a sample of two interview transcripts.

A mobile note taker was used for taking field notes which were afterwards uploaded and saved on a computer. The notes taken were mainly around questions or themes that the researcher intended to follow up considering that the interviews were being recorded. Later, the notes were used for reflecting on things such as what important issues a respondent may have raised, a new mini ‘hypothesis’ that might explain some observations or personal reactions to some respondent’s remarks or actions.

As is expected of semi-structured interviews, the researcher was constantly analysing the data ‘on the feet’ in terms of thinking about the responses and questions to raise that may not have been premeditated (Babbie and Mouton, 2001). This suggests that the analytic process was occurring in the researcher’s mind even during field work as there was constant engagement with the data. The researcher also kept a manual journal in which

ideas about how the analysis was unfolding were written down (i.e. memoing). The journal included questions that arose as the researcher was collecting and analysing data, sketches of relationships between ideas or themes and theories in literature as well as thoughts about the data as these emerged. The process of data collection and analysis took place over a period of 7 months from September 2006 to April, 2007.

Ethical considerations were taken into account in as far as all participants consented to taking part in the study (Appendix 8). Other than four public client bodies, none of the other organisations represented in this study have been disclosed by name or other means by which they can be identified. Each respondent was assigned one or two letters of the English alphabet for identification e.g. (A) or (ZA) to maintain their anonymity.

4.6 GROUNDED THEORY DATA ANALYSIS TECHNIQUES

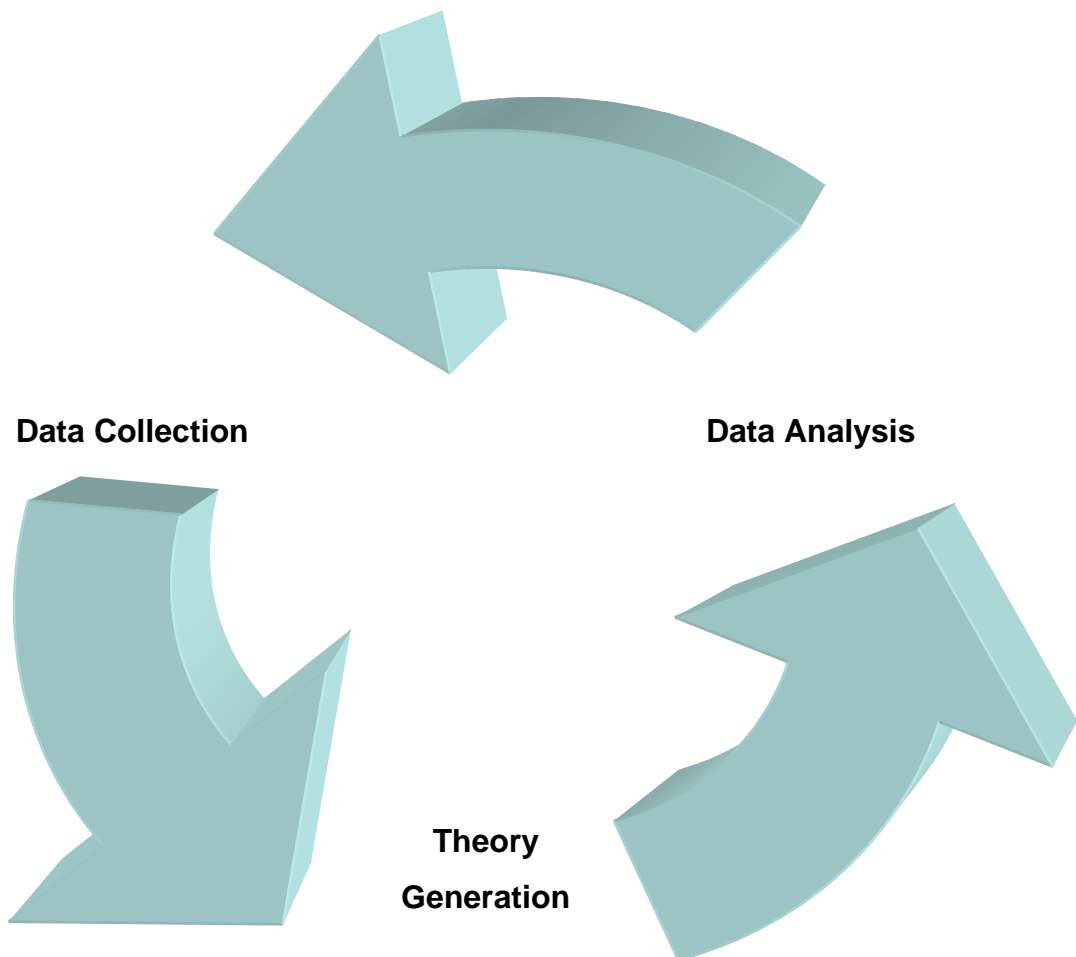


Figure 4.4 Theory, Data Generation and Analysis Process

In most types of research, data collection is a separate stage in the research completed before data analysis can start (Punch, 1998). On the contrary, in a grounded theory

approach, the pattern is different in the sense that guided by initial research questions, the researcher collects a first set of data, preferably quite small, analyses the data then collects more data guided by emerging directions in the analysis (Cresswell, 1998; Punch, 1998; Strauss and Corbin, 1998; 1990). This process is repeated through theoretical sampling until no additional data are showing new theoretical elements but rather confirming what has already been found (Punch, 1998; Strauss and Corbin, 1998; Mason, 1996). Figure 4.3 depicts the characteristic feature of grounded theory which involves continuous interplay between data collection, data analysis and theory generation.

In most types of research, data collection is a separate stage in the research completed before data analysis can start (Punch, 1998). On the contrary, in a grounded theory approach, the pattern is different in the sense that guided by initial research questions, the researcher collects a first set of data, preferably quite small, analyses the data then collects more data guided by emerging directions in the analysis (Cresswell, 1998; Punch, 1998; Strauss and Corbin, 1998; 1990). This process is repeated through theoretical sampling until no additional data are showing new theoretical elements but rather confirming what has already been found (Punch, 1998; Strauss and Corbin, 1998; Mason, 1996). Figure 4.3 depicts the characteristic feature of grounded theory which involves continuous interplay between data collection, data analysis and theory generation.

4.6.1 Close Reading of the Data

All transcripts were read more than once in accordance with Miles and Huberman (1994:85)'s recommendation that transcripts should be read "for regularly occurring phrases, and with an eye to surprising or counterintuitive material". The first time the transcripts were read, the researcher also listened to the tape recordings in order to identify errors in transcription. It also helped to get an overview of the issues before reading smaller segments more analytically (Babbie and Mouton, 2001). Close reading of data involved scrutinising the data with a view to identifying potentially significant aspects in the data. This process continued throughout the research process as more data were collected till the writing up of the thesis. It was also essential in identifying emerging themes.

4.6.2 The Analytical Process: Coding and Categorising Data:

Each transcript was read and coded in its entirety before moving on to the next. This process helped to understand fragments of data within their contexts (de Wet and Erasmus, 2005). Coding was done by hand, which enabled the researcher greater visualisation of the data. Although not as detailed, the research followed quite closely the approach proposed by Strauss and Corbin (1990) of open coding, axial coding and

selective coding for analysing data. This coding process focuses on specifying *conditions* that gave rise to a phenomenon, the *context* in which it is embedded and the intervening conditions which influence the phenomenon, the *action or interactional* strategies by which it is handled, managed or carried out and the *consequences* of those strategies. This process is referred to by Strauss and Corbin (1990:163) as a “paradigm model”. It provides a framework for the researcher to locate instances of data and explicate the relationships between the categories (Strauss and Corbin, 1990). The data analysis was characterised by identification of themes, examination, comparison, conceptualisation and categorisation of data (Cresswell, 1998; Punch, 1998; Strauss and Corbin, 1998; 1990; Hussey and Hussey, 1997). The codification process is described below.

Step 1: Open Coding

The coding process commenced with open coding which entailed fragmenting or breaking down the data to open it up to theoretical possibilities (Strauss and Corbin, 1998). The intention was to conceptualise the data by analysing it and identifying patterns or events to be used in generating conceptual categories implicit or explicit in the data. Open coding was done initially on printed copies of the transcripts utilising highlighter pens (highlight - cut and paste method). Conceptual labels which corresponded with highlighted texts were indicated in pen or pencil in the adjacent margins. An example of conceptual labelling is illustrated in Table 4.4.

Table 4.4 Fragmentation of Data and Conceptual Labelling

Data	Conceptual Label
... in the earlier days when we didn't have this sort of percentage, we went into JVs to boost targeted goals	Boosting targeted goals

The coded data were then inserted into a coding template which reflected broad themes as shown in Table 4.5. Each category was subdivided into several subcategories called properties. Properties are “attributes or characteristics pertaining to a category” (Strauss and Corbin, 1990:61). These provide the broad dimensions for the category (Cressell, 1998) and are shown in Table 4.5 under conceptual label.

Table 4.5 illustrates coding for part of a category Joint venture.

Table 4.5 Open Coding Template Sample

Open Coding (Highlighted text)	Conceptual Label	Questions and hunches
Joint ventures...based on prior long relationships	Prior Relationships	Old Network or trust?
client approached us but we never actively sought a JV	Client influence	Imposed on?
JV will benefit both because one partner brings in finance which the other partner hasn't got	Mutual benefit	Sees JV's as a vehicle for growth.
It's better to do JVs with blacks only because we are sick and tired of window dressing	Window dressing	Power held asymmetrically?
If companies can stay away from JVs, then just do so because a lot of companies participate in JVs for the name	Marginalisation	Preventing the weaker party from benefiting as a way to maintain the status quo?
I suspect what has been happening is the dominant JV partner says 'go stand over there' and I'll make sure we don't lose any money'	Keeping others-out	Good quote for the write-up

The properties within each category were further broken down into dimensions which are "the smallest units of information analysed in grounded theory" (Cresswell, 1998: 241). Table 4.6 provides an example of extreme characteristics in the data pertaining to the category of joint venture.

Table 4.6 Category, Property and Dimension

Category	Property	Dimension	
Joint Venture	Prior Relationship	Very Important	Not Important

Emerging themes from the responses were compared across the transcripts for similarities and differences. This was done by selecting a bit of data and assigning it to a specific category (ies) which helped to reduce the data and make it more manageable (Dey, 1993). The codes were determined from the research questions, themes used in semi-structured interview guides, literature and the data itself. Some pieces of data were

assigned to more than one category. Questions about the data or the categories and any 'hunches' (intuitive insights) were written in the margin as indicated in Table 4.5. Once the substantive codes had been established, the second step in conceptualisation was to identify theoretical codes through axial coding.

Step 2: Axial Coding

Codes served as tools for thinking about the data. The aim of axial coding was to elevate the concepts identified in open coding to provisional categories and establish relationships between these categories. Segments of responses reflecting similar themes were grouped together. The categories were refined and re-integrated by constantly comparing bits of data and establishing relationships by linking them with some concepts. This process eventually reduced the number of codes (conceptual labels) substantially. It identified 11 phenomena from the categories and these formed the main components of the substantive theory. Table 4.6 provides an example of partial data conceptualisation in which similar properties of a category were grouped together.

Table 4.7 Partial Conceptualisation of the category of Joint Venture

Motivations	Selection Criteria	Power Struggles
<ul style="list-style-type: none"> • Pooling resources 	<ul style="list-style-type: none"> • Client's influence 	<ul style="list-style-type: none"> • Unequal sharing of risks and rewards
<ul style="list-style-type: none"> • Meeting bidding criteria 	<ul style="list-style-type: none"> • Prior relations 	<ul style="list-style-type: none"> • Different ways of doing things
<ul style="list-style-type: none"> • Enhancing winning chances 	<ul style="list-style-type: none"> • Informal relations 	<ul style="list-style-type: none"> • Withholding of information
<ul style="list-style-type: none"> • Accessing certain market segments 	<ul style="list-style-type: none"> • Trust 	<ul style="list-style-type: none"> • Not loyal to game of empowering

The process exemplified in Table 4.6 was done for all categories. As the coding proceeded, further ideas emerged suggesting new interpretations, leads, relationships with other parts of the data and signalling to questions and other issues to explore in the next data collection phase (Miles and Huberman, 1994).

Much of literature was introduced later in the study and seen as further data to be fed into the analysis, but at a stage when theoretical directions had become clear (Punch, 1998; Goulding, 1998; Hussey and Hussey, 1997). In Goulding's view, literature is used to inform and locate the development of the theory (Goulding, 1998). In keeping with the interpretivist philosophy, it is vital to acknowledge that "...inquiry is always context bound and facts should be viewed as both theory laden and value laden" (Goulding, 1998:53). Following the recommendation that a perspective is essential to build the analysis from (O'Callaghan, 1996), the triadic framework proposed in chapter 3 was utilised.

Step 3: Selective Coding

During selective coding, the research identified the core problem that was experienced by the construction firms in the study. This core problem was conceptualised as *uncertainty in accessing public sector contracts*, due to the changing preferential procurement policies. The analysis then focussed on identifying a core category and attempting to establish links between this and other categories (Strauss and Corbin, 1998; Charmaz, 1993). The core category represents the central theme of the research and provides a condensed version of what the research is all about (Strauss and Corbin, 1998).

It is important to note that although open, axial and selective coding are separate stages, these activities are carried out simultaneously. Coding is a cyclical process which typically shifts from open to axial and then selective and, at times occurring concurrently. In particular, there was no distinction between which activity was being completed between steps 2 and 3 (Hussey and Hussey, 1997).

Selective coding involved a series of analytic activities. As part of the analysis, the researcher paid particular attention to issues such as frequency and extensiveness of comments, use of metaphors, specificity of responses and what was not said. By continuously going back and forth to the data to look for possible explanations, the researcher was able to verify the findings in the process. The findings were also presented to two colleagues on an on-going basis to help the researcher enhance their sensitivity during interviews (Babbie and Mouton, 2001) and data analysis.

The researcher also kept checking for consistency within each response such as what the respondent was saying and the kind of evidence they were providing. It was important to do so seeing that grounded theory analysis aims at generating abstract theory to explain what is central in the data. A fit between the data and the theory generated is critical as it ensures 'validity' and applicability of the theory within its immediate domain. The essence was to find a core category at a high level of abstraction but grounded in the data which accounts for what is central in the data (Punch, 1998; Strauss and Corbin, 1990).

A core category (central phenomenon) began to emerge only after much constant comparative analysis with the data, continuous questioning and painstaking analytical thinking. The core category which gradually subsumed the interrelated codes was conceptualised as *Business and Strategic Re-alignment* of Construction Firms. This category represented the various actions and practices that construction firms were engaged in to exploit the incentives or disincentives built into the preferential procurement system. These activities aimed at either disrupting or maintaining the *status quo* in the industry as the firms interacted with each other and with the clients. The core category

recurred frequently in the data and represented processes or strategies that contractors used in their interactions in response to an evolving yet, restrictive procurement environment.

The core category was clustered around 3 main categories namely tendering-based strategies, project-based strategies and organisational based strategies) as shown in Table 4.7. These three categories represented 11 actions and practices employed by the firms which are referred to in this study simply as phenomena and are discussed in chapters 5 and 6. The underlying aims of these strategies were observed as either to maintain the industry socio-economic *status quo* or to disrupt it.

After the core category was identified, the researcher focussed on modification of the categories and integration of the emergent theory with the categories and subcategories (Strauss and Corbin, 1998). An overview of the substantive theory which emerged is presented in Table 4.8 and discussed in detail in chapters 5 and 6.

Table 4.8 Overview of the Substantive Theory

Component	Conceptualisation of the theory					
Core Problem	Uncertainty of Accessing Public Sector Contracts					
Core Category	Business and Strategic Re-alignment of Construction Firms					
Domains	Interaction with other Firms			Interaction with Clients		
Main Categories:	Low-level Tendering Based Strategies	Medium-level Project Based Strategies	High-level Organisations Based Strategies			
Underlying Aims:	Maintenance of the status quo			Disruption of the status quo		

An integrative or mini-framework, consisting of four broad components (presented towards the end of chapter 6) was used for locating data that were relevant to the research questions. The components were classified as *antecedent*, *mediating*, *strategic* and *outcome variables* respectively (Dainty *et al.*, 2000), based on the principles of conditions, action and consequence ‘paradigm’ model of Strauss and Corbin, 1998. As the research identified a ‘wicked’ problem, it follows that some observations fell in more than one classification. For example, an action in one context was a consequence in another. Nonetheless, the use of an integrative framework served as a tool to achieve a logical conceptualisation of ideas and presentation of the results obtained within the broader triadic analytical framework discussed in chapter 3.

In summary, the printed copies of the transcripts were mostly used in the analysis and the analytic trail is as summarised in Table 4.9

Table 4.9 Summary of Grounded Theory Data Analysis Process

STEP	ACTIVITY
1	Sorted out what data was needed to answer the research questions. This involved looking for themes and pulling together all the information or segments of the texts that addressed the specific theme. Based on broad themes, key terms in the texts were underlined / highlighted.
2	Restated the key phrases at a descriptive level but often in a paraphrased form.
3	Phrases relating to particular categories of information were then assigned unique conceptual labels through the process of coding. Reduced phrases in each category several times as different clusters were tried and themes emerged. Here the abstraction was at a conceptual level informed by the data and the literature. Categories had to be grounded both conceptually and empirically.
4	Reduced the clusters within the categories and drew links and relationships whilst repeatedly checking and verifying data aimed at achieving rigorous analysis.
5	Compared and contrasted items of data in the same category and across categories and generalised about the phrases in the categories.
6	Generated narratives or mini-theories explaining the data.
7	Identified the core category and integrated the mini-theories in an explanatory framework developed in chapter three through a process of thinking about and identifying how the data related to any part of the 'outside' theories.

4.7 METHODOLOGICAL LIMITATIONS

This section is concerned with the methodological limitations of this study and how they were dealt with. In terms of reliability, the researcher was well aware of the effects of both interviewer and interviewee bias. About the latter, the research relied heavily on interviews yet the relationship between what people say, what they do and what they say they do may not always correspond (Punch, 1998). The reasons for this may include the inaccuracy of interviewees' memories, interviewer's presence or effect, people's dishonest and self-deception and social desirability. To minimise the effect of interviewee's bias data distortion, some questions were asked twice but in different ways, many interviews were conducted and documentary evidence was used to complement the interviews.

Interviewer bias often relates to the chance that the interviewer may influence the interview by asking certain questions or asking questions in a manner that prompts certain answers. In addition, there is also the chance of the researcher/interviewer imposing meaning as they construct it. Concerning this, the researcher was aware that complete objectivity was unattainable. However, to minimise the subjective effects, semi-structured interviews were used as opposed to structured interviews. These allowed for interviewees' constructs to come out, and leading questions that may influence answers were avoided.

In relation to theory building, it is difficult to determine when categories are saturated or when the theory is sufficiently detailed. Setting aside as much as possible, theoretical ideas or notions to enable analytic, substantive theory to emerge is equally difficult (Punch, 1998). In this regard, constant comparison was an ongoing activity in the research process, search for negative cases was actively done, emerging themes were sorted on basis of similarities and differences and rethinking of tentative conclusions was continuous (Goulding, 1998; Mason, 1996). In addition, two interviewees had an opportunity to comment on the initial concepts developed to ensure the categories were saturated. The transcribed interviews were also read through by two other people besides the researcher which helped in comparing some of the significant emerging issues in the data. Therefore, by recognising and addressing the implications of the researcher's subjectivity, the reliability was enhanced.

Another methodological limitation was the diverse accents of the respondents which made it difficult to transcribe the taped interviews. However, by downloading the recordings to a computer, the researcher was able to play back on slow several times to ensure that what the respondents were saying was captured as accurately as possible.

4.8 CONCLUDING REMARKS

This chapter has critically explained and justified the philosophical and methodological approach adopted by this research. It suggests that the research problem is complex as opposed to simple and the research is aimed at theory generation rather than theory confirming. The chapter has justified the adoption of a constructionist view to grounded theory approach in the spirit of phenomenology/interpretivist paradigm. The main data collection instrument employed was semi-structured interviews complemented by documentary evidence such as organisational reports.

The argument for grounded theory to be used both as a research approach and a set of procedures for analysing data has been made. In addition, the subjectivity of the researcher in the research process has been acknowledged. The following chapter presents the analysis of data and interpretation of the findings.

CHAPTER 5: RESULTS PRESENTATION AND DISCUSSION

5.0 INTRODUCTION

The purpose of this chapter is to present and discuss the findings of the study obtained through the application of the methodology and methods described in the previous chapter. During coding, the relationships between and/or among the categories centred around a number of themes which represented different phenomena in the data. These formed integral parts of the substantive theory articulated in chapter six. This chapter in essence, discusses part of the narrative which emerged during axial coding relating to objectives one and two. A number of selected verbatim quotations from interview transcripts are used to illustrate key points in the explanations and/or make the explanations more immediate and grounded (Mason, 1996). The chapter starts with a presentation of the context of the field study.

5.1 THE FIELD STUDY SETTING

This section provides the profile of the participants of the field study. The terms participant(s), interviewee(s) and respondent(s) are used interchangeably and so are the terms; government, public sector and client. Similarly, enterprise(s), company(ies) and firm(s) are used interchangeably and so are the terms historically and previously, and grade and designation respectively. A summary sheet of the break-down of the participants is given in Appendix 9.

5.1.1 Gender and Racial Profiles of Participants

There were 28 contractors in the sample, 4 of whom were women and 24 were men. The small number of women is unsurprising considering that construction is traditionally a male dominated industry (RSA, 2007b). Currently, there is however, an increase in the number of companies registered as woman-owned or in which women hold management positions within the RSA construction Industry (RSA, 2007b). Notwithstanding, most women owners and managers were not available for interviews when their firms were contacted.

As purposive sampling was used, the sample was not empirically representative of a wider population but, it constituted a relevant range in relation to a wider theoretical universe (Mason, 1996) in the construction industry. In terms of race, 18 of the contractors were black and 10 were white. Most small to medium sized companies were owned/managed by blacks whereas majority medium to large companies were by whites. Black is a generic term that includes Africans, Coloureds and Indians as per the B-BBEE Act (2003)'s definition. Whilst 'race' is a sensitive issue, it was important to get views from

individuals within different ethnic groups on the assumption that these groups might perceive or experience preferential procurement policies differently. The racial and gender breakdown of the contractors in the study is given in Table 5.1.

Table 5.1 Racial groups and Gender of Participating Contractors

Racial Groups	Gender		Total No. of Respondents
	Female	Male	
African	2	2	4
Indian	0	6	6
Coloured	2	6	8
White	0	10	10
Total	4	24	28

Despite the sample being “representative” of all race groups and gender, there were no white females. In addition to the reasons cited above, this observation may also be a reflection, particularly for small firms, that black women might have taken advantage of the opportunities provided by preferential procurement more than white women have.

5.1.2 Industry Experience and Positions of Respondents

The industry experiences of the contractors interviewed ranged from 3 to 50 years as shown in Table 5.2.

Table 5.2 Industry working experience of Contractors

No. of years of experience	1- 5	6 -10	11 - 15	16 – 20	21 – 25	26 - 30	Above 31
No. of Respondents	5	5	1	1	11	2	3

The respondents were also classified according to the positions they held in their respective firms as provided by themselves presented. However, by classifying them broadly as top, middle and lower management, it revealed that the respondents held senior positions in their respective firms as shown in Table 5.3. It was also noted that all 6 respondents who indicated their positions as “owner” were from small firms which were typically led by 1, 2 or few partners often with no formal CEO.

Two major public sector clients involved in the study were the DPW and City of Cape Town Municipality represented by Chief Directors for public works and supply chain management respectively as shown in Table 5.4.

Additional interviews were held with a building inspector, a client QS consultant and a project manager whose procurement industry experiences varied from 10 to 25 years. The private QS firm’s name has been withheld for confidentiality reasons.

Table 5.3 Positions Held by Participating Contractors by Gender and Race

Designation	Gender		Race		No. of Respondents
	Male	Female	Black	White	
Top Management					
CEO	2	0	1	1	2
Chief Director	1	0	0	1	1
Director	1	0	1	0	1
Director / Project Manager	0	1	1	0	1
Managing Director	2	0	1	1	2
Administrative Director	0	1	1	0	1
Owner	5	1	5	1	6
Chief Estimator	1	0	1	0	1
Public Manager / Co-owner	1	0	1	0	1
No. of Respondents	13	3	12	4	16
Middle Management					
Contracts Manager	1	1	2	0	2
Business Dev't. Manager	1	0	0	1	1
Senior Estimator	2	0	0	2	2
Financial Manager	1	0	0	1	1
Project Manager	2	0	2	0	2
Manager	2	0	1	1	2
No. of Respondents	9	1	5	5	10
Lower Management					
Estimator	1	0	0	1	1
Site Agent	1	0	1	0	1
No. of Respondents	2	0	1	1	2
Total No. of Respondents	24	4	18	10	28

Table 5.4 Industry Experience and Designations of Client Representatives

Organisation	Position	No. of years of experience	Gender	Racial group
DPW	Chief Director	10	Male	African
DPW	Building Inspector	30	Male	Coloured
Cape Town Municipality	Chief Director	25	Male	Coloured
Cape Town Housing Development Company	Project Manager	25	Male	African
QS Consulting Co.	Chief Quantity Surveyor / Owner	10	Male	African

5.1.3 Ownership and Management Structures

At the firm level, the shareholding ownership and management structures of the firms in terms of race and gender are as shown in Table 5.5.

Table 5.5 Ownership and Management Structures of Firms

GENDER				
Female Shareholders(%)	0% - 15%	15.1% - 25%	25.1% - 50%	50.1% - 100%
No. of firms	12	1	10	3
RACE				
Black Shareholders (%)	0% - 15%	15.1% - 25%	25.1% - 50%	50.1% - 100%
No. of firms	3	1	4	18

Some notable features revealed in the sample included that; 8 of the companies were 100% black male-owned; 3 were 100% women-owned and 2 were 100% white-owned companies. According to the B-BBEE Act 2003, companies qualify to be defined as BEE companies, particularly black-owned or women-owned and black-empowered or woman-empowered when blacks or women own at least 50.1% and 25.1% respectively. These percentages are proxies for BEE compliance. However, most respondents tended to ignore the 0.1% and gave round figures such as 50% when asked what their BEE status was.

5.1.4 CIDB Grading of Firms

The sample included firms within all the 9 designations particularly under general building works (GB) as shown in Table 5.6.

Table 5.6 CIDB Grading (GB) of Participating Contractors

CIDB Grading in General Building Works	Number of Firms
1 GB	2
2 GB	2
3 GB	5
4 GB	3
5 GB	2
6 GB	4
7 GB	2
8 GB	2
9 GB	3
Total	25

Of the firms represented in the study, one was not CIDB registered. There were 4 firms registered in more than one class of work as shown in table 5.7.

Table 5.7 Firms Registered in more than 1 CIDB Grading

Firms represented by respondents	CIDB Grading
(L)	2SFPE, 5EEPE, 5MEPE, 6GBPE, 6SAPE
(S) & (T)	4SAPE, 5MEPE, 7CEPE, 7GBPE
(V)	2EEPE, 4GBPE
(Y)	7CEPE, 7GBPE

PE is used by the CIDB to indicate contractors that are potentially emerging. However, neither is there a clear definition of 'potentially emerging' nor a criterion for establishing which firms qualify as such. It appears all firms that have majority black shareholders qualify as for a PE status.

5.1.5 Historical backgrounds of firms

The sample included 19 historically disadvantaged firms and 7 historically empowered firms respectively. Historically disadvantaged firms have been taken to be those firms in which the majority shareholders are black or previously disadvantaged individuals. It does not mean that the firm itself was disadvantaged. In this study, all firms that do not qualify as historically disadvantaged are referred to as historically empowered firms.

5.1.6 Year of Establishment of Firms

All but one of the firms in the study had been in existence for at least 3 years. No less than 12 firms were established in or after 1996 i.e. year in which targeted procurement was introduced in the industry. With regard to 100% woman-woman firms, 2 of the 3

100% woman-owned firms were established after 1996. The remaining 1 and 9 other woman-empowered companies only changed ownership in due course to include women.

Table 5.8 Year of Establishment of Firms

Year of Establishment	No. of years of establishment	No. of Firms
1940 – 1950	56 – 66	2
1951 – 1960	46 – 55	2
1961 – 1970	36 – 45	1
1971 – 1980	26 – 35	2
1981 – 1990	16 – 25	2
1991 – 2000	5 – 15	11
2001 – 2006	0 – 4	6
Total No. of firms		26

All 7 historically empowered firms in the sample except one were established before 1996. This pattern may suggest the relative difficulty of historically empowered individuals to establish firms (other than BEE companies) after that date that can successfully operate within the public sector because of government preferential procurement policies. However, looking at their CIDB grading, all the historically empowered firms are registered in 5GB or higher except for one.

The majority of the firms (20/26) were established before the PPPF Act 2000 and BBBEE Act 2003 were enacted. All of the firms were also established before the CIDB registration was made mandatory. This is relevant to the study in that the respondents were able to give accounts of the firm's experiences of the changes in preferential procurement policies and practices over time as the legislation has evolved. They were knowledgeable and provided relevant and useful data that contributed to theory generation.

The remaining part of this chapter discusses 3 of the 11 phenomena observed in the study. The first 2 were classified under *antecedent variables* concerned the contractors' and clients' perceptions of preferential procurement policies particularly in terms of the rationale and implementation thereof. These reflected their understanding and experiences of preferential procurement as discussed below. The relevance of exploring these variables is that from a constructionist perspective, behaviour is determined to a large extent by the meanings that groups and individuals attribute to structures.

5.2 PHENOMENON 1: POLICY IMPLEMENTATION

Although preferential procurement policies were first implemented in the construction industry as early as 1996, the PPPF Act was only enacted in 2000. This contributed to the *ad hoc* development of preferential procurement in the industry. It emerged from the data

analysis that there are variations among public sector clients in the way they implement preferential procurement policies in the construction industry. Four notable variations are discussed below.

Firstly, the threshold value to which the 80/20 or 90/10 points scoring system apply differs. For one client (**ZE**), the 90/10 system applies to contracts with a minimum value of R500 000 and the 80/20 to contracts below R500 000. For client (**ZD**), the 90/10 applies to contracts with a value of at least R2 000 000 and 80/20 to those below.

Secondly, it was found that the 20 and 10 points for socio-economic development goals respectively were split differently. Clearly, there is no standard way of breaking down these points. The break-down depends on the specifications of each contract and also on the client's particular needs. To illustrate this point, one client (**ZE**) said that for a 90/10 points tender, they usually allocate 3 points for gender (woman equity)/disabled; 3 points for PDI and 4 points for locality (industry specific). Another client (**ZD**) said that they allocate 5 points for PDI/HDE or SMMEs and 5 points for locality (industry specific or service specific). Locality may include requirements such as a certain unskilled labour must come from the local area or a certain percentage of PDI sub-contractors must be involved in the project in furtherance of the RDP goals.

The third difference is that one client (**ZE**) had a fixed parameter of plus or minus 12% of the tender estimate for tenders to be considered acceptable. Any tender price falling outside this parameter is automatically considered high risk and the tender does not go to the next phase of consideration. The other client (**ZD**) said that they did not have any fixed price parameters as each contract is considered on its own merit.

The fourth notable difference is that one client (**ZE**) had tenders reserved exclusively for women-owned or empowered construction firms through a policy intervention termed 'Mama Special'. The aim of this programme is to encourage more women to enter the industry in line with government's policy intentions of widening women participation in the economy and changing the gender participation profile of the industry. The construction sector charter has set a target of 30% for women in ownership and management positions by 2014 (RSA, 2007b).

These variations would seem to confirm that the PPPF Act 2000 only provides a framework within which individual public sector clients develop their own preferential policies for implementation. The variations among clients reaffirm the concerns raised by some authors about the subjective interpretation of the PPPF Act 2000 among clients (CIDB, 2004; CSIR, 2003; BIFSA, 2001). The non-uniformity of policy implementation can

create problems for some contractors in that they have to learn different tendering systems for different public sector clients.

During the early stages of fieldwork, 12 contractors were asked about how familiar they were with the construction charter or the BEE balanced score card. The aim was to establish how the new rules i.e. B-BBEE Act, 2000 were interacting with older rules i.e. PPPF Act 2000. Most of the respondents (8/12) said that whilst they were not quite familiar, they were aware of them. All the 8 interviewees who responded this way were from historically disadvantaged and/or small enterprises. A further 2 interviewees from medium-sized firms seemed to have greater familiarity, with one saying her company had been approached by a BEE rating agency who wanted to explain about the codes of good practice and the balanced scorecard **(O)**. The second one pointed out that his firm will have to incur additional costs to be able to comply with the new BEE rules because to be “able to prove that to an accreditation agency, we will have to employ another person. We don’t have the capacity. The problem is we’ll incur an extra cost...**(I)**”.

The remaining 2 interviewees from large established companies were up to date with the BEE issues reflected by statements such as;

*We are restructuring our company to be in line with construction charter. I know the basic requirements **(J)***

*...our concern is to achieve the targets... we embrace the charter. We are trying to become fully compliant **(D)**.*

The line of enquiry concerning the construction charter and/or the BEE score card was not pursued further in the field study for two reasons. Firstly, at the time of data collection, the respondents were under the impression that the BEE scorecard did not apply to small companies. This position was confirmed by the gazetted Codes as indicated in chapter two. Secondly, the clients interviewed confirmed that they were still awarding tenders based on the principles of the PPPF Act 2000. It was observed that there were some discrepancies between the current points system criteria based on the PPPF Act 2000 and the BEE balanced scorecard based on the B-BBEE Act 2003. The latter system consists of seven measurement criteria of which equity is only one of them as opposed to the narrow-based principles of the PPPF Act 2000.

In addition, it emerged that the points scored on the BEE scorecard were not currently converted or equated to the 10 or 20 points provided for in the 90/10 and 80/20 points system. As one of the interviewees pointed out;

I think the BEE charter and DPW tender requirements are not linking at the moment, there have been differences in what the tender requires and what I

believe is the new BEE charter. I think DPW documents need to tie up with the Charter (J).

These findings reflect that the PPPF Act 2000 is not compatible with the BBBEE Act 2003. One client **(ZD)**, aware of this predicament expected the situation to swiftly change following the signing of the codes of good practice into law. The findings however, provide an indication of the changes likely to gain momentum in the next ensuing years where more medium and big companies will likely be measuring their BEE performances. There is already an increase in the “willingness” among companies to ‘share’ equity as a result of the charters and codes of practice. In the light of this, the re-alignment of the PPFA Act, 2000 with the codes of practice would be essential.

5.3 PHENOMENON 2: CONTRACTOR PERCEPTIONS

The second phenomenon which emerged from the analysis reflected both positive and negative perceptions of preferential procurement by the contractors interviewed. Significantly, in terms of the policy, there appeared to be a general consensus among the respondents that preferential procurement policies were relevant for providing opportunities to those who were previously excluded from social and economic participation. 15/26 perceived the policies as facilitating economic empowerment and long-term development. Typical comments included;

Preferential procurement policies are essential because what the government is basically doing, is nurturing a lot of building contractors to excel ... so that they can take on bigger projects but it happens with time ... the government is trying to ... give us the opportunity (A).

BEE is great, well its empowerment on the side of the historically disadvantaged ... I really like the BEE because it gives us an advantage; it sort of helps us... (B).

Moreover, some respondents indicated that they “*have benefited from policies as far as its easier now to get work obviously. We have been able to establish ourselves because even if the company was started a long time ago it’s only in past 4 or 5 years that we started tendering and from then we have learnt to grow quite well...we never had this opportunity before (Z).*” For others, preferential procurement policies were seen as “*essential for growth. Small contractors need to grow (J).*”

Respondents from historically disadvantaged backgrounds seemed to emphasise equity as the underpinning justification. A typical example being; “*for previously disadvantaged companies ... there are great opportunities for them from which they were always sidelined... if I look at our company, we came at a time when we were still in the old*

apartheid regime and you basically never ever did any public works...and now you have those opportunities (R). Because the problem of inequality was framed in racial terms, the solution seems to be framed in the same manner, a characteristic of a 'wicked' problem, as some respondents categorically stated;

We have benefited big time since the introduction of preferential procurement policies. Before, the work was only given to the whites but since the new procurement policy came up, we are a bit fortunate, our company has got a lot of work from the government (S).

Government is doing a lot for us as small businesses. Normally all this was going to white people (E).

In addition, some respondents pointed out that with the introduction of preferential policies, at least they now have *"a slight preference over the white companies that tender with us due to being fully affirmative black company. There is a points system in place where we come out on top. So we have got a slight advantage being from previously disadvantaged background. The government is doing a great job we have definitely got a slight advantage, we are being given an opportunity" (T).* In comparison, *"in the past, it wasn't so good but now with the new procurement systems in place, it's much better. Our chances of getting a contract are much better because of my black empowerment equity, my BEE" (P).* From these responses, it appears that the 'slight advantage' provided by preferential procurement policies is seen merely as equitable and consequential by the beneficiaries. This line of thought gives credence to the argument explained by Hicks, (2002) that to level the playing fields, either those who were previously advantaged should be 'capped' or those who have been disadvantaged should be given some preference.

The findings reflect the notion that preferential policies are a means of preventing the perpetuation of inequitable participation in socio-economic systems expressed by authors such as Watermeyer (1998) and Gounden (2000). This perspective sees the government's intentions as being aimed at disrupting the socio-economic status quo through the provision of entrepreneurial, employment creation and skills development opportunities to the majority of the population. As exemplified by one client who said;

...for the last 5 or 6 years,...the goods and services that we purchase...48% is from SMME's or HDI's. So we have done very well on that score and our target is 40%. To give effect to the PPPF Act... (ZD).

Not all respondents reacted positively to preferential procurement policies. The giving of preference according to gender seems to create some tension/conflict which was well exemplified by two respondents as;

Now they are giving more points to them (women) than we what we got. So their chances of getting whatever job there is much greater than what I am gonna get. I am sitting with experience, I am not talking about myself here now but in general, we are sitting here with the experience and up-to-date technology, the lady comes in she gets more points than I get, so the price and her points means her chances of getting the job are greater than mine. So how are they going to learn if they are getting all the big jobs? (E).

But what my problem is today, ... they are trying to level the playing fields by getting women. But the problem is the women are coming in straight at the top, there is no basis at the bottom... (F)

The comments above were made by black males. Three other respondents openly expressed dissatisfaction with how the policies have led to a systematic reduction in work opportunities, turnovers and profits for them;

X, an established company is battling. X has not had a job from government for... long. 15 years ago X used to get 70% of its work from the public sector ...now it gets from public sector nought, zero ... its turnover has dropped, its ability to make profit has dropped significantly... The ability of the white company to do a decent turnover, to make money and to grow has been cut in half whereas the ability of a company which qualifies in terms of black ownership, their ability to make money at the moment is great... (li).

We didn't have a BEE status or... PDI status. It was all in white hands...they were talking about change but they never did ... Now they could see ... it is not going to work because... the tenders were all there but at the final hurdle, they were not going to get the job someone else was going to get the job... they caused their own downfall ... we tendered on work and we lost about R40 million worth of work because of the structure of the company, the previous company (ZC).

... and I lose 10 points on every tender. 10% is gone...Since BEE/preferential policies came into operation I lose because I am not as yet a BEE ... The preferential clause which is coming now definitely ... eliminates quite a few of us. Even if our price is better because of the reason of points system we don't get it... Unless off course ... the contractor which is BEE or preferential system hasn't got experience but it doesn't happen; even if he hasn't got experience they have been getting the jobs... (L).

The above responses were given by respondents from non-BEE companies and there is merit in their claims. Earlier this thesis suggested that government intervention is not

neutral, there are always distributive consequences. The findings therefore support the notion that a shift in the institutional environment implies a loss of competitiveness and efficiency for some firms (Hall and Soskice, 2001). Moreover, the findings are also consistent with the idea that an institutional framework affects some interests adversely while it favours others (ERF, 2004; Przeworski, 1998; Putterman *et al.*, 1992).

Nevertheless, while non-BEE firms may be disadvantaged, it should not be taken for granted that the only reason these companies fail to win tenders is because they do not get any preferential points. As was discussed in section 5.2, the 10 points for preference are not all allocated for PDI or gender equity only. For example one client (**ZD**) allocates 5 points for PDI/SMMs and the other 5 points for socio economic goals (locality). Another client (**ZE**) allocates 2 points for PDI, 2 for gender/disabled and 4 for locality. This means that a contractor can still score 4 or 5 points respectively out of the 10 if s/he decides to meet these other specifications. It is also possible to make up for the preferential points from the price part. This is in addition to the fact that clients consider other aspects such as experience and financial standing of the contractor as well.

Two clients explained that in the 80/20 points system, chances are slim for non-BEE companies to win contracts because the BEE companies have a maximum preferential advantage of 20 points and there are many BEE companies competing for the same projects. However, for the 90/10, they argued that it does not give BEE companies as much of an advantage as many would like to think. In fact, it was purported that there are non-BEE companies that are getting contracts;

*If the PDE gets preference but puts the price too high, but a HEE gets nought for preference but if the price is right, they can still get it. Giving advantage to the person previously disadvantaged because of the make-up of his company but if the price is not right, he will not get it. The maximum preferential you can get is 20% and 10% ... If you have a situation where company X tenders R5 million and company Y tenders R3.9 million. That margin there implies that no matter what preference you get, it cannot make up that difference. If this company can do the job at that price, it will get it no matter what company that is (**ZD**).*

The client's response above places much emphasis on price rather than preferential points. According to the client, the final decision depends on which contractor gives them the best price. The implication of this is that if a non-BEE company gives them a lower price, it could get the tender over a BEE company that quotes too high a price. From this stance, it can be concluded that it's not easy to predict a clear-cut winner until all other factors have been considered.

A second client expressed a similar view as above that;

It is easier to find black companies to be involved in the 80/20 contracts rather than the 90/10 because in the 90/10 we are quite stringent and the development points are quite low, they are just 10. They can get it, they do. It's not as much as it can actually kick people out. On the 90/10 it's possible; on the 80/20 it's difficult. On the 80/20 it's difficult for white people to pitch in there but on the 90/10 it's easy because they qualify there on various issues. Hence our contracts mainly go to black businesses on the 80/20 but on 90/10 it's quite steep (ZE).

Client (ZE) also provided statistics of contracts awarded during part of 2006. An analysis of the statistics reveals that at the end of the first quarter, the client had awarded 117 contracts with a total value of R381 million. Out of that 117 contracts, 116 contracts were awarded to historically disadvantaged individuals to the value of R253 million. Only one tender went to a white-owned company that did not even have a woman equity representation. In terms of quantities, 99% of these contracts went to BEE companies. However, the value of the single contract that went to the non-BEE company was worth about R168 million. This constitutes 44% of the total value of all the tenders awarded, which means that only 66% went to the hundred BEE companies. This finding is quite significant in that while in numbers, a large percentage of contracts go to BEE companies, in value terms, the BEE companies typically get very small contracts as a result of their predominant 1 or 2 GB grading status. This corroborates the statements made by a client that non-BEE companies can get the 90/10 contracts (where there may be little or no competition from BEE firms) but find it difficult to get the 80/20 ones.

It was also observed that most of the respondents were very cautious in answering questions possibly for fear of showing their company in a 'bad' light. Notably, one interviewee distinguished between his company's position and his personal opinion. For example, as a company response he would say; *"it (preferential procurement policies) has not stopped us from growing. The company is standing behind it. At the moment as it stands, it's a great way to uplift people (M).* Then, for his personal opinion he would say something different like; *"we should look at the whole country and lift up everyone not pull the one down and pull the other one up which is happening at the moment. The grade is getting lower so that the masses of the population can go higher which is actually a false show of or false way of uplifting people because they are not going up (M).*

As can be deduced from the two responses quoted above, the company's position seems to 'endorse' preferential procurement policies whereas the personal opinion is more reserved. There could be two possible explanations why the interviewee has an apparent

conflict of views. Firstly, arguably, government policy intentions are to influence all industry participants, irrespective of their historical background, interested in government-type work to exhibit behaviours that are supportive of its BBEE policies. To this end, government strives to award tenders and contracts to firms that comply with its BEE legislation. Consequently, it's in their best interest for companies to comply with government BEE legislation or at least appear to be supportive of the same. Hence, the interviewee's positive comments representing the company's perception of preferential procurement policies.

A second plausible explanation could be that maybe when the interviewee talked about the company's position, he may have been referring to preferential procurement as policy whereas for his personal opinion, he referred to practice. During the interviews, it was common to find interviewees, including targeted beneficiaries, criticising preferential procurement policies in practice while supporting them in principle. This is highlighted in both this chapter and the next.

The perceptions of preferential procurement policies were well summed up by one interviewee as being a 'two-way street';

Whether or not the preferential procurement policies are good or essential for industry development is going to have a two way street either way. Those who have had will feel that something has been taken away and those who have not had will say this is great. But then, many of those who say this is great...the financial backing has to come in, education, marketing oneself frantically to stay abreast because the big boys out there will fight it because they will question that 'why must I give half of my apple away'? (L).

The findings confirm the sensitive and contentious nature of the topic which sometimes inhibits people from talking openly about it. Basically, for contractors wanting to operate or indeed continue to operate in the public sector, preferential procurement policies mean exploring various ways of obtaining government work. By so doing, contractors hope to manage business risk and improve turnovers. In practice, the act of balancing equity and efficiency however, remains contentious as shown throughout the chapter.

The third phenomenon classified under *mediating variables* was related to the immediate and wider context within which preferential procurement operates. Mediating variables are those variables which influence the phenomenon being studied. These variables built on phenomena 1 and 2 and were concerned with the practicalities associated with preferential procurement. These related to disincentives and constraints which

contractors have to contend with as they strive to exploit opportunities provided by preferential procurement.

5.4 PHENOMENON 3: OPERATIONAL CONTEXT

There are several factors which emerged from the data analysis as impeding the application of preferential procurement policies and subsequent realisation of government objectives in the industry. Some factors are interrelated and directly or indirectly also shape contractors' actions and interactions covered in chapter six. These factors are grouped under six broad headings as discussed below.

5.4.1 Financial Related Factors

There were 10 respondents who reported having financial related problems and an equal number reported none. The view that lack of capital was a major constraint was held exclusively by contractors from historically disadvantaged backgrounds. Respondents suggested that because they lack collateral, it is difficult for them to obtain guarantees, sureties or performance bonds from financial institutions or materials from suppliers. A good example is;

The problem that we have basically is from a financial point of view ... It's still this issue of, most of your people are white suppliers and they say 'yes but my parents worked very hard we can't just give you so much credit'... for instance, we have 4 schools that we are busy working with but say if we got only R100 000 at a bricks company, how do we supply all of this?...That is the difficult(y) that we are in and the financial institutions, it's still a problem. They got this thing that you need to have collateral. Our parents didn't leave us with properties and lots of money or whatever. We started with nothing and the banks is not assisting us, they need collateral (O).

A related issue was the time it took to secure finance. As a result, a contractor could sometimes find him/herself in situations where "...you are awarded the tender and you don't have capital to start with. The banks are not ready to finance more especially women (G). The consequence of this is that because the contractor cannot move on site until the finance is secured, the contract period becomes shorter and delivery on time difficult.

There also appeared to be a dependency on interim payments from clients by contractors. While this is common practice, it appeared to be more pronounced for historically disadvantaged enterprises because they are mostly small with weak finances. Yet, these are the firms that government is trying to target through public procurement. Over reliance

on interim payments has its own sets of problems as highlighted by one interviewee who said;

the other problem that you find with some of our black contractors today. He gets this job, he builds this thing, he makes a million Rand profit on this project but that R1 million profit ...is going to go into his back pocket. Its not going into his company by building up his company, he drains this company completely then he waits for the next job. Then on the next job he starts scrounging around... they live from one certificate to the next. If the certificate is coming late then the people get paid late, the supplier gets paid late and everybody get paid late... (Ui).

The findings so far bring to the fore the challenges of attempting to capitalise people without capital. As Hirsch, (2005) notes, most blacks have little wealth or collateral of any form and thus face huge problems in raising finance with relatively little to offer.

Of the 10 who said that they had no problems with finance, 3 were from small firms, 2 of whom were from historically disadvantaged backgrounds. The remaining 7 were from big firms. However quite different reasons were given by the 3 small firms compared to the large firms. For the small firms, these included using their “own money as bank guarantee...” **(N)** or tendering for jobs which one “ must be comfortable within the price range because I don’t want to go the bank cap in hand and go and ask them ... **(Q)**. Another respondent talked about interim payments saying; “I don’t have problems regarding finance because the projects that I do get I can sort of fairly handle well. And ... normally do some of the work immediately within 2 to 3 weeks then you know you will get progress payments”...**(V)**.

The 7 big companies mostly said that they did not have problems with finances because they were established companies with good track records. 2 were from historically disadvantaged backgrounds. Typical responses include;

*We haven’t got a problem with the banks, financially we are very strong.... You just don’t get money or guarantees. We had to work our way up we also started at the small stages where we had to put down guarantees **(S)**.*

*The company has a good rating so we don’t have any difficult(y) when it comes to finance **(Y)**.*

*We are big enough. We are a very large organisation. We are capable of obtaining the performance bonds **(ZA)**.*

Overall, “finance has a huge impact on cash flows, it has a huge impact on your ability to grow because all those guarantees that we put up comes off from your overdraft facility

(R). The lack of finance affects the firm's ability to do work and to grow. This also has implications for a firm's grading or graduation as the CIDB assessment takes into account the firm's financial and work capabilities. This in turn constrains the firm accessing the opportunities provided by preferential procurement.

5.4.2 Skills Related Factors

Given the historical background of the country, most people from historically disadvantaged backgrounds lack skills. In the construction industry, the situation is no different. The critical skills shortage is experienced at both management and workforce levels and its felt by historically empowered and previously disadvantaged firms alike. All respondents were concerned about the general lack of skills in the industry, with a typical comment being;

We are struggling in general with skills. There is a big shortage of skilled people out here but it's across the board, from bricklayers straight through to qualified foreman. If you can find a good foreman, you are lucky, keep him that is how bad things are out there. But what they have also done, they have fast tracked, giving a labourer skills where it used to be a 3 to 4 years apprenticeship, its now its three months apprenticeship. That person who has three months apprenticeship can't do the work (M).

It was suggested by some that if not well addressed, the skills shortage could lead to the industry importing skills. For example; *"...from the training side of things, things are very bad and it doesn't bode very well at all for the construction industry. They won't just be capable carrying out all the work that is coming up in the next few years and they may have to import skills (ZB).* Another respondent went further to highlight the negative impact of importing skills when he said; *"training is a concern. And training in this industry, if we don't get our facilitation of training funds in place to be able to train, our industry is going to be in a huge predicament... There is so much to deliver but no skills available to be able to deliver. Ok, let's bring in the Chinese, Indians, other nationals. What does that do to our workforce here? How does that impact on our industry? First of all in bringing in those skills here, there are fewer requirements to train... (R).*

Historically empowered firms that are transforming equally feel the impact of the skills shortage as the comments expressed by respondents from historically disadvantaged and empowered backgrounds respectively were similar. For the latter, *"the problem has been, really the fact that we cant get PDI's to join our industry to go out on site to get the hands dirty sometimes, I am not talking about just those who dig but site agents, contracts managers, project managers..." (D).* Clearly, established firms that wish to participate in

public procurement have to employ people from previously disadvantaged backgrounds in management positions or go into joint ventures with them or engage them as subcontractors and material suppliers in order to meet their BEE requirements.

Both the literature and empirical study has established that generally, many historically disadvantaged individuals in ownership and management positions lack financial, entrepreneurial, management and building skills. The lack of such essential skills affects not only their ability to manage the enterprises but also to supervise or monitor the quality of work. As Murdick *et al.* (2000) contend, big firms can afford to hire the skills they need whereas with small firms, it's either the key persons in management have the skills or they do not. In many instances, *"... these poor small contractors were really running around trying to find work and ... they didn't just have the skills to take on this work and to do the work and skills in running a business and the necessary financial assistance that's a big thing, you know"* **(ZB)**.

Because of the lack of skills by contractors, *"... quality, standard of workmanship is dropping, it has been dropping for quite a number of years but its dropping completely now ... it's the same thing as being a member of parliament. You don't need any qualifications. This...has happened now in building industry, they don't need to be qualified to become contractors. They can just simply come in and operate... Progress is good but I am against trying to change overnight because fast tracking is not good because there is no basis... the thing is happening so fast that we may not sustain it"* **(F)**.

The study established that contractors tend to misrepresent their skills and capabilities to clients. One client **(U_i)** explained how a black woman-owned company provided references of only work that had been done successfully. The client then assessed this contractor based on these good reports and awarded an R18 million contract to the company. However, it was later found that the contractor could not raise the 10% guarantee after 18 months and when the work on site finally commenced, it was of such poor quality that the client had to cancel the contract.

From the above incidence, it was difficult and costly for the client to observe the resources and capabilities of the contractor outside the track record she had provided. Even if a client uses the CIDB database, they can only consider any tenders that have been cancelled by clients within the last 12 months and captured by the CIDB. The contractor has private information which the client is not privy to, leading to adverse selection problems.

The lack of skills, leading to the undermining of government's empowerment objectives, was highlighted by one as;

... sometimes you get a guy but when it comes to experience, its no use just about giving the job to a guy because he is previously disadvantaged but he hasn't got the experience because he in turn he must go to a qualified guy to actually do the work... Let's say, he had 3 months to finish the job, but the contractor will take 6 months because he has got no experience to do the work or sometimes they have got to cancel the contract that in turn costs the department a lot of money just to cancel or have the job run over. (Q)

Another interviewee corroborated some of the views on the lack of skills by narrating the problems she has experienced as a newcomer to the industry as follows;

I have no background in construction. I had to learn and there were times when you would employ a bricklayer because I also don't know I will take a bricklayer but my foreman will see that the guy cannot build. Until, a foreman will come to me and say, 'mama, are your walls right'? And then he will tell me 'stand in this corner' and then you see that it's going like that. Those are the experiences you get when you are raw to the industry. And when I started to employ them...sometimes he will lay only 100 bricks and sometimes we even have to break the walls if the wall is skewed, you must break it and redo and to redo it that's a loss to you... (K)

While some BEE contractors deliver poor quality products, there are some who deliver good products and get tenders on merit. A particularly articulate expression of this includes one from a 100% white-owned company;

...I know quite a few of previously disadvantaged contractors. They feel a bit hurt that they should be pointed out that they get a job because of their colour yet they are very good I can tell you... We have been tendering against one another for a long time...we don't seem to understand that these people work very hard and they have reached high levels...because of their own economic sense, their own enterprise, own expertise... I have got about four of them whose work is perfect. The firms they started from small. They don't need anybody, they don't need me, and they don't even need the government to hold their hands. They will get the job at any rate because of their experience in the building trade. (N).

Previous research has highlighted the problems of skills shortage in the industry (e.g. Shakantu *et al.*, 2006; CIDB, 2004). In large part, this study reinforces the negative impact of skills shortage on the industry's ability to deliver in general and on preferential procurement in particular. Although the government is providing work opportunities, the findings suggest that because targeted beneficiaries lack skills, their ability to exploit these opportunities is severely constrained. These findings are consistent with literature and

confirm that for demand side interventions to work effectively, there is need to address supply side constraints as well (CIDB *et al.*, 2005; CIDB, 2004; Watermeyer, 2000).

5.4.3 Tender Adjudication and Contract Administration

A substantial number of contractors (15/28) made comments about the bureaucracy associated with public sector contracts. These included the time delays between tender advertisement, tender award and commencement of projects, delays in making payments and slowness in bringing out work. Two such comments include;

There is a lot of bureaucracy. Settling of final accounts takes long...The problems are getting payments, getting payments in time, getting final accounts sealed and paid takes long which makes some large companies to shy away... Government work can take years to settle. (D).

The tendering procedure is bureaucratic and there is a tremendous amount of paper work to be filled in, and you got to fill in the same documents every time ... which is demanding (I).

Unlike small BEE companies which mostly depend on public sector work with its associated bureaucracy, the abundance of work in the private sector encourages established companies not to focus on the public sector. For example;

The last five years or so, its been mainly private sector work because prior to that we did undertake quite a bit of public sector work but there are various problem areas in regards public works... Payments in time was a problem and also on occasion there were sort of questionable tender awards made which I think left a bit of a sour taste in our mouths so we tended to go towards the private sector ... unfortunately, due to there being so much private work out ...we would rather focus on private sector work than the public sector and in fact, public sector work has sort of in the last years actually diminished. I just think that there is such an abundance of work at the moment that there is actually sufficient work for everybody and empowerment, you know, small affirmative action companies will not find difficult in finding work in general (ZA).

Established companies tended to emphasise that there has not been much work coming from the government. The essence of preferential procurement policies is to unbundle large contracts into smaller ones to make them more accessible to previously disadvantaged firms. Some respondents openly expressed reservations that; “*there are lots of small government work that we are not interested in. There are lots of small contractors that would run and do those small jobs. When we start getting to R100 million*

plus, then we will look at it very seriously regardless of where it is coming from (D). The lack of interest by most big firms is because the "...structure is a bit big for those types of tenders. We found that we would tender with the smaller contractors and obviously the overall structure of our company, would make it uncompetitive in that market. So we need projects in excess of R50 000 000 to be competitive (J).

As can be deduced the above quotes (D) and (J), big companies suggested that they are uncompetitive in markets for small contracts and therefore seldom tender for those. There was however some sense of optimism in that *"the government just hasn't brought out many big contracts or enough contracts for whatever reasons... And I know it is supposed to be happening now or in the near future (ZA).* This will probably be the case given the government's planned infrastructural investment through ASGISA as discussed in Section 1.2.3.

Whereas respondents from both big and small firms complained about delays in payments and settling of final accounts, the impact is more severely felt by small contractors. This suggests that the payment policies of government may not have adapted to a new reality of engaging the smaller firms in public procurement.

Another issue which emerged was that the public sector's slowness to deliver affects contractors' ability to create jobs particularly small and/or previously disadvantaged firms that are reliant on public sector work. This often *"...causes the contractor not to be in a position that you can really employ people on a fixed basis although I would really like to do that because if you operate a business, social responsibility comes with it but that social responsibility is denied to people because of inconsistency of work... (B).* Related comments include;

probably the greatest problem is government's own inability to bring out work on a continuous basis to keep everybody busy. You know, small companies as soon as they don't have work for 3 or 4 months they are probably closed down, they have to close down. There has been very poor sort of management of work from the government side where there is no work for months, and then there is a lot of work, then there is no work for a long period of time (ZA).

So in that process, what happens is in smaller companies, they have this cycle of lots of work, no work, and that cycle is not created by the industry conditions but by the departments (clients) themselves (R).

There were also comments made that while opening up of the playing field to everyone was appreciated, there was still need to be practical. The argument was basically that it is too easy to enter the construction industry, tender for a job and even get it because there

is no criteria or qualification for becoming a contractor. The lack of regulatory mechanism was said to be attracting a lot of job seekers and/or business entrepreneurs with no skills as earlier discussed. Concerns about lack of regulatory mechanisms in the industry were articulated as;

In our eyes, it still appears to be a free for all. It doesn't appear as though they are applying their own rules... The problem that government has probably is that arguably it is too easy for someone to come into the industry to find a bakkie, scrap together the money that you need to secure the project and to actually secure the project without the track record ...Now the way government hands out tenders, you can potentially have people from diverse industries, one could be a hairdresser and the other a doctor and come together and form a construction company because they think they can make quick money... (I).

Why must a doctor go learn, why can't I just go to the medical council, 'I want to be a doctor'. 'Where have you practiced? What have you studied, what have you done etc?' Why can't a contractor have something, why don't you go through the process of learning how to tender, how to treat people, know how the building works, why can't a contractor write a test or exam or whatever? It will make things so much better. You must meet this criterion to be able to become that. Why mustn't a contractor have that? (E)

My biggest problem that I have is that there is no regulatory mechanism in the industry to ensure that we will be successful in our process, in bringing about good quality black contractors ... (U_i)

Essentially, there are no formal qualifications required for lower levels of CIDB contractor registration. However, higher grades require a minimum number of qualified persons as shown Appendix 10. Ever since preferential procurement policies were introduced, thousands of BEE companies have sprung up (phenomenon 8) regardless of whether the key person has the skills or not to deliver. This is probably the principle reason that poor product delivery is more pronounced for BEE contractors.

5.4.4 Opportunistic Behaviours

As indicated in literature, opportunistic behaviours related to moral hazard, adverse selection and shirking of responsibilities are endemic in the industry. In the context of this study, preferential procurement policies seem to either perpetuate opportunistic behaviours and/or create opportunities for such to thrive as discussed further in the next chapter. The aim of this section is to merely highlight one of the opportunistic behaviours that is commonly associated with preferential procurement policies, namely fronting;

Sometimes even if we do compete you are never sure if these people are all women or there are men behind because if the husband is in construction, you will see him on the site and not the woman even if she won the tender... So that is what we call fronting (G).

If there is any room, then it's for the benefit of the big companies that they will use the emerging contractors, not to empower them but to enrich themselves (B).

But what my problem is today ... is they are trying to level the playing fields by getting women. But the problem is the women are coming in straight at the top, there is no basis at the bottom ... But because they do not have that expertise, there is a big problem now in the building industry because the workmanship that is being, the work that is being done now is not up to any standard anymore... The only thing that the woman is at the moment is the front (F).

During an interview with a Consulting QS (H), he stressed the difficulty of establishing how much competition there really is in the industry and why government programmes fail;

I want to believe that there are female contractors but there are also men who are running some of these companies and putting these women in front so that they can get work but these women are not actually really involved or understand what is happening with the construction companies. ... I think the government on its own has done a wonderful job by giving PDI opportunities but now the biggest problem that I am having is everyone wants to be rich in the process they compromise the government policies. The government has got clear policies on many issues but because people want to be rich very soon you find that some of the programmes fail. Even from a contractor's point of view why would a 100% male owned construction company bother to tender for a Mama special? Why do people do that? To take a step further, these male contractors even take their wives and put them as partners knowing that they don't even own a cent in the company (H).

In general, interviewees from previously disadvantaged backgrounds despised the idea of being used as a front, with one respondent saying; *"so there is a lot of work for females also. But we must be careful also that we are not only being used. That is very important to me because I said 'I don't just want to be 30% on a piece of paper. I want to know what is happening'. I am not just going to be somebody on a piece paper" (O).* For others, whether or not to be used as a front *"...depends on your moral standing or how you want to participate. As for me, I don't want to be a puppet to anybody. I don't want my name used, I want to participate (R).* Economic empowerment should be about meaningful

participation “... because we are sick and tired of window dressing. It is still window dressing... for instance yesterday I went to this meeting, they want me to partner with them; they are quite a big company. But they told me straight away that ‘we believe you are hands-on, we believe you are on site everyday but we don’t want you on site, we want you to be on management level’ ...”(K).

In practice, however, it is not easy to identify fronting and because it’s a grey area, it raises many questions. For example, can it be called fronting if a woman owns a company and hires a man who is competent to do the job even if that man is the husband? What if the capital and skills belong to the man and then he puts a woman in management or ownership position who knows nothing merely for the sake of gaining gender equity points? The latter is undoubtedly a case of fronting. It’s no different from a white-owned firm that puts a black person with no idea in a management position merely to get preferential points. This is because both companies will claim a higher BEE status than the actual substantive economic benefits flowing to the woman or black beneficiary would suggest (RSA, 2007b).

On face value, the company that fronts may manage to access certain empowerment contracts. Also, the person who gets fronted may sometimes benefit financially. On paper, it will show an increase in the number of blacks or women in ownership and management positions. However, while fronting is a strategy for some, it’s a problem and most definitely for the government. It’s an unintended consequence of the policies which undermines government’s empowerment objectives as further discussed in chapter six.

5.4.5 Locality problems

As discussed previously some contracts require that a certain percentage of subcontractors and labour from the local area must be employed on the project. This creates employment opportunities for the local communities in line with government’s policy intentions. It also highlights the construction industry’s potential/ability to create jobs and act as a ‘training ground’ for skills acquisition as was earlier suggested in this thesis. Further, the preponderance of small firms in the industry makes it a particularly attractive vehicle through which government can pursue some of its wider socio-economic objectives through targeted procurement.

In this study, 4 respondents said they had been involved on projects that required a specified number of workers and subcontractors to come from the local communities. Based on the experiences of these and one client (ZE), the study establishes that notwithstanding the positive aspects, this practice also creates a host of other problems

for the contractors. The presence of community problems was highlighted by statements such as;

We have had many problems.... community problems. They don't want to do the work, you can't get any other subcontractors, because they say they are from the local area you must employ them... but then they have skills shortage, then they don't do the work properly then you can't chase them away because then they hold you to ransom (ZC)

basically, most of my jobs has been in townships and you always get the community problems. We had one project in Philippe East where we built a school there. They insisted that we need to use their plasterer. They subcontracted a plasterer in the area (O)

In general, working in this area, Athlone was a problem because the bulk of these people, most of these people have never worked before and they come onto the construction site... and its hard work. (Y).

There are also instances when the community makes unreasonable demands such that;

sometimes, you (main contractor) still feel a bit threatened. You know the attitude...if you can do the work, fine but you know they want to sit there and demand how much you must pay them... once they are on the site then they want to dictate the terms to you...I am not exaggerating one bit. They take over, they say 'you have to employ us, this is what you are going to pay us'. So you are actually working for them. That's not a good situation... (ZC)

The negotiations with the community can sometimes take very long and this has cost implications for the main contractor. The study could not establish the reason (s) why a community may behave in this manner. The behaviour may be indicative of the desperate need for employment by the locals living in communities which have high levels of unemployment. It could also suggest opportunistic behaviours among potential BEE targets. Alternatively, it could reflect that “ *most people at the grassroots do not understand the terms or policies; they cannot understand or speak English ...* “(B). There is conflict between government objectives and the targeted beneficiaries' responses as they take advantage of the opportunities provided in a rather misguided way.

However, despite the myriad of problems, contractors do often manage to get skilled workers from the local area. One respondent explained that;

Most of our work comes from Lavender Hill which is quite underprivileged you know, struggling community so we try to help the guys. Recently we worked in

Delft. We got about 80% of our workers, plumbers, etc. from the area and it was quite good...We never had any problems... We have been very fortunate actually even with the recent work in Delft, the guys helped us, they didn't waste our time. All the specialised guys, plumbers, and electricians we got from there and they did a good job (Z)

However, the respondent was quick to point out that it often takes long to find suitable workers and yet, the contract period is fixed;

I think government requires you to take about 60 to 80% of people in the area you are working which can be a problem if the people are not doing the work properly. We put out someone because they were not pulling their weight so you have to keep looking and looking until you find the right guy. But you only have about 3 months on the jobs so you don't have forever to keep looking for good guys. (Z).

The findings demonstrate the difficulties that contractors sometimes encounter in trying to find skilled people within the local area in which the project is being undertaken. Inevitably, these affect the contractors' ability to deliver.

Moreover, contracts that require a certain percentage of local labour to be engaged usually make provisions for a Community Liaison Officer (CLO) to be appointed. This CLO has the responsibility of liaising between the contractor and the community. S/he works with the community and assists in selecting the workers as s/he knows the community better. However, one interviewee **(ZC)** reported that the CLOs also create problems for the contractor such as receiving kickbacks from members of the community whom they promise to give a job on the project, or showing bias towards certain individuals or groups. As a result, CLOs often get threatened by the community and run away. It was purported that sometimes, a contractor has to go through 5 CLOs within the contract period.

The study further established that in some cases, the community problems exacerbate to the point that the community locks out the contractor from the site until the issue gets resolved. Giving accounts of their experiences, two respondents said;

No, you got lots of problems...at times, actually we stopped one school we were building. See here an article entitled "Work at Joe Slovo Park School Ground to a Halt". That was me. You got a lot of community issues. I had to take a week or two weeks or something like that but you find that most of the guys that works in the townships, they get these problems. Sometimes there is a total shut down of the site... There are times when they lock the sites. (ZC).

They insisted, they stopped our site for a month almost. And part of the government contract is that you have got to use 50% of the unskilled labour from the area (O).

Finally, the high rate of crimes in the communities was also identified as a source of problems for contractors. One interviewee (ZC) narrated that sometimes the workers steal from the site because they live in the area. In a separate incidence, a client (ZE) reported that some shooting took place injuring one of the contractor's main workers on site and hence affecting the workflow. In this particular situation, the client had to subsequently cancel the contract. Table 5.9 presents a summary of the locality problems encounters in some public sector projects.

Table 5.9 Summary of Locality Problems on Public Sector Projects

Types of Community Problems
Difficulty & time involved in finding skilled workers and sub-contractors within the local area
Problems associated with unskilled labourers: site healthy & safety and quality concerns
Community demands that all the labour should come from the local area
Community demands that only local subcontractors be used on the project
Community dictates how much they should be paid
Community dictates who should be employed & who shouldn't
Community liaison officer (CLO) associated problems e.g. getting kickbacks
General threats from the community
Shutting / closing down of the site by the community
High rate of crime in the local area

The findings in this section highlight that preferential procurement policies create business and work opportunities through the use of both targeted labour and targeted enterprises. However, the findings also reveal the negative impact that community-related problems have on the contractors' ability to deliver on time, to quality and within budget. These constrain the application of preferential procurement policies in practice.

5.4.6 Preferential procurement: Policy and Practice

So far the findings show that there is no clear indication as to whether or not preferential procurement policies are working in practice. Results seem mixed. On the one hand, positive findings suggest that preferential procurement policies are working on the ground. These include increased business and employment opportunities for previously disadvantaged individuals which also entail growth and economic empowerment. On the

other hand, some results suggest that the policies are not working on the ground mainly because it only “works for certain people and it doesn’t work for others... There are obstacles in these policies” **(C)**. “Policies are not being realised. They are too slow to deliver... the people running the major companies are still whites **(B)**. In addition, “it is very difficult to implement preferential procurement policies and get the quality at the end on the project. It becomes more costly to finish the job off **(J)**.”

That there is no consistent pattern among the respondents to say that any particular group of respondents hold positive or negative views is interesting. Many respondents provided both positive and negative anecdotes of preferential procurement such as; “no, I wouldn’t have thought that preferential procurement policies are necessarily good for the industry. But I do think it its very necessary in terms of ending up in a country where everyone can live happily... You absolutely need to have it for that reason not for the good of the industry, actually the industry has taken a big knock, I would think lots of skills has gone overseas because of affirmative action. We need those people but we also need affirmative action, we need those preferential procurement policies **(I)**.” These findings illustrate the “two sides of the coin” of preferential procurement where on one side, it is often supported or criticised on moral (equity) and economic (efficiency) grounds but with arguments framed differently.

Preferential procurement reflects one way in which government is trying to alter the terms of participation in the economy through public procurement. While it is not the aim of this research to establish direct causal-effect relationships, it however assumes that the *antecedent* and *mediating variables* discussed have an influence on how contractors interact among each other and the types of strategies they subsequently adopt in response to preferential procurement.

5.5 CONCLUDING REMARKS

This chapter set out to present and discuss the results from the field study related to research objectives 1 and 2. The chapter has highlighted the variations in the implementation of preferential procurement policies by different clients. It has also confirmed that clients are still using the principles or guidelines of the PPPF Act 2000 which are currently not compatible with the codes of good practice emanating from the BBBEE Act, 2003. It has been suggested the practice of preferential procurement produces mixed results. For some, it has increased their opportunities and workloads whilst for others the opposite holds. These findings suggest that institutional changes created by preferential procurement policies create different opportunities for different

contractors. Risks are increased for some and reduced for others, which has implications for government's aim of levelling the playing field.

Whilst at the policy level, preferential procurement seems a fairly good idea, at the operational level, it is criticised for a number of reasons. Some of the criticisms include that it does not seem to be targeted at the 'right' people and that it engenders tensions/conflicts and opportunistic behaviours. The chapter has also discussed a number of factors which tend to cloud the potential that the industry has for creating business and work opportunities through preferential procurement. Against this backdrop, the next chapter focuses on understanding how the revisions in the BEE rules and criteria for award of public sector contracts alter the behaviour of participants in practice.

CHAPTER 6: DISCUSSION AND INTERPRETATION OF RESULTS

6.0 INTRODUCTION

The objective of this chapter is to examine how contractors manage or handle certain situations resulting from the evolution of preferential procurement policies. The aim is to enhance the understanding of the responses of different contractors in terms of the various strategic actions and practices employed. Against the background of an evolving public procurement environment, the chapter makes inferences about how the collective outcomes reflect government's wider socio-economic objectives. The discussion and interpretation of results in this chapter address objectives 3 and 4. These represent the final part of the narrative which emerged during axial and selective coding.

The remaining 8 phenomena are discussed in this chapter under *strategic variables* and *outcome variables*. The substantive theory generated including the theoretical conjectures and propositions are presented towards the end of the chapter.

6.1 PHENOMENON 4: OPPORTUNISM IN COMPETITIVE TENDERING

Until recently, public sector tenders have been awarded on the basis of previously disadvantaged status (PDI points) and the contractor with the lowest tender price has almost invariably won the tender. As a result, many contractors have strategically tendered at very low prices in order to increase their chances of winning tenders and yet have failed to cover their overheads. The lowest tender price principle has inefficient outcomes as two respondents explained;

What has happened and is actually sad is that some BEE companies have come up to the floor because now they have a chance. They have gone to tender for jobs of about R20 million plus. The job can be done for R20 million, they go tender for R19 million because they want the job. It means they start off and then they are not going to make money. If you start off a job with not making money, you are not going to make it. The person gets harmed more than what he benefits (M).

It was the lowest tender wins immediately... so even if 10 guys tender for over a R1 million and then someone comes in at half a million, they will get the tender even if they can't complete the job or even buy materials at that price (E).

Contracts can sometimes be cancelled by clients due to; "*poor performance, lack of performance, inability to complete a contract...*" (ZD). The implication of cancelling contracts is that it is very costly particularly for clients because of the *switching costs* involved. These costs may include costs of re-tendering, inability to recover additional costs generated by the original contractor's failure from the new contractor, associated

litigation and premium likely to be charged by the new contractor to complete the work (Winch, 2002). The ability to switch costs is unevenly distributed between the parties; with the margin for opportunistic behaviour by the contractor equating the client's switching costs (Winch, 2002). Another respondent provided a very telling example of the extent to which opportunistic practices are taking place in the industry related to collusions among contractors;

What had happened is that I tendered and he (a friend) tendered. My tender was a R1 million lower than his tender. I withdrew my tender and therefore we won the contract on his tender which means everything was made out in his name. I found that I was first and he was second (lowest) so for us to make the extra million Rands, I had to withdraw my tender so the contract could be awarded to him, the second lowest (P).

In corroborating contractors' accounts, one client (**ZE**) explained that based on negative experiences, the client's department has since narrowed their tender price acceptance lower and upper limits from +/- 20% to +/-12%:

Sometimes it happened that some contractors were predominantly 20% lower than the estimates and we gave them the contracts and these were predominantly black contractors and they are the contractors that predominantly failed. They didn't fail because they are incompetent; they failed because the financial returns were not justifying their existing on those sites...which means if this person is too low, they get the tender but at the end of the day, they cannot now complete the job. It is not profitable and it defeats the purpose of government. So...we...work on an acceptable risk level of...+/- 12%... So if you are over or under 12%, we don't even look at you, you are high risk, you are out immediately ...because we know that you may claim to be cheaper but when it comes to the site you start having problems and you cause much more damage than help because history has proven that. You find that since we have introduced that 12% parameter, the failure rate has dropped significantly (ZE).

Respondent (**ZE**) also indicated that they do make adjustments to the tender estimates whenever more than 60% of the contractor's estimates fall outside the acceptable limit. He suggested that this practice reduces opportunities for contractors to collude with members of the client's consultancy team as it has been in the past. In selecting the suppliers of construction services, the client's intention is to engage the most competent (effective and efficient) contractor, yet the contractor knows more about its real competence than the

client (Winch, 2002). It is this asymmetry of information that gives rise to problems of moral hazard and adverse selection problems raised in chapter 3.

In the context of the tender adjudication, the moral hazard problem implies the difficulty for the client to know if they are getting *lemons* or *peaches* when they award a tender to contractor because s/he has the lowest price and/or the highest preferential points. It is equally difficult for a client to know with certainty whether or not the lowest price is offered because the contractor is unable to contract with any other client or that other clients know more about its real capabilities. Adverse selection problems are particularly crucial in preferential procurement where large contracts have to be unbundled into smaller ones to make them accessible to previously disadvantaged contractors.

However, the implementation of preferential procurement policies appear to be changing for the better as “...the tendering procedure has evolved now from what it is used to be. It’s a lot better. It used to be...the lowest tender wins immediately... But now they have a new adjudication process...” **(E)**. Contractors were also aware that, “scoring higher points does not necessarily mean winning a tender. Preferential policies were implemented on the basis ... of HDI’s (historically disadvantaged individual points) but nowadays; most of the things have changed. When I started in 2001 with the DPW, scoring the highest points meant you will get the job but now there are so many things that public sector looks at, it is no longer like that **(C)**.”

As literature indicates and can be surmised from contractors’ actions, when product differentiation is not a viable option, contractors will go for price-based strategies (Barney and Hesterly, 2006; Hillebrandt *et al.*, 1995). This was found to be the case in this study particularly that the delivery of products is reliant on the public sector client. Contractors mainly compete on the basis of price. Therefore, having the ‘best’ or market-related price was emphasised as a critical success factor by most respondents;

*The pricing has got to be right... To ensure getting the job, you have to ensure the pricing is market related **(P)**.*

*You win tenders by getting the best prices, by getting the lowest prices though not necessarily lowest tender wins – always goes with best lowest tenders **(D)**.*

*You have to realise when we are tendering, we go out to look for the best possible price. They look at possible best price when tendering **(L)**.*

The shift by clients towards more value for money criteria rather than lowest price reflects their desire to correct market distortions while attempting to mitigate contractors’ opportunistic behaviours. It is for the same reason that clients now also take into account other factors such as financial standing and experience of the contractors in awarding

contracts. Despite all the efforts, contractors however do sometimes misrepresent their skills and capabilities as discussed later in the chapter.

One respondent cited an example of how some clients are also behaving opportunistically by taking advantage of contractors who lack contract management skills;

...the very first meeting I walked in I could see that this contractor (historically disadvantaged) is going to be taken for a ride here. They don't understand the intricacies of construction management. They were forced to do something they were not supposed to. I objected to it and the government went mad...When the next round of tenders came through, they had changed... I understand these things and these guys do not understand ...because you find that most of the black contractors in South Africa are not people who went to university...It's the artisans ...who've taken the opportunity and also you find there are a lot of teachers ...in the industry...and they haven't got a clue of what is going...(U).

The findings support allegations by Kadehors (2006) procurement practices tend to produce behaviours that contradict instinctive human understanding of what is a co-operative relationship and how a trustworthy exchange partner should behave. Kadehors reasons that a bias of distrust is created which incrementally could provoke and legitimise slightly more opportunistic contractor strategies and slightly more suspicious client strategies in a vicious circle.

6.2 PHENOMENON 5: CONSULTANCY AND MENTORING

The degree of obligations placed on the tenderer through the tender specifications differs from contract to contract in accordance with client's particular needs. The general feeling among the respondents was that the tendering documents were quite extensive, bulky and time-consuming. In addition, it emerged that some contractors had problems filling in tender documents appropriately. One client complained that;

In terms of the adjudication process, the main problem that I am getting is that people seem not to be educated enough still in filling in tenders. Tender filling is not just about the price; you have to go through the whole document and understand all the requirements. I have to call her (contractor) in because she was writing N/A where she was supposed to put in information... I need that information because if you don't give me the schedule of tender how do I know that you are capable of doing that job of x amount? (H).

A pattern was established which reflects that some contractors face problems with tender pricing depending on the size of the firm or their experience. For example;

I normally engage the services of a QS but only when they are small tenders then do I do them myself but when they are big tenders, I give them to the QSs to do (G).

We do pricing in-house pricing, if you want to be on top of it. Every time you are going to enquire by somebody it will cost you time. All of us in top management are familiar with what's going on. It's not our first time (L).

From the responses given, it became clear that contractors who are new in the business and/or do not have a background in construction and/or are running small firms are more likely to experience difficulties in pricing tenders. The more experienced contractors or large firms that do in-house pricing have no problems because of their experience and knowledge. Tender pricing is an expertise and many of the contractors particularly at the entry level, which happen to be predominantly historically disadvantaged, have little skills. Therefore, consulting with QSs can be seen as a way of transferring knowledge to contractors. This is in line with government's intention of developing skills and empowering PDI contractors in the industry. However, it was suggested that in most instances, the consultant does the work in isolation and only delivers the finished product to the contractor. Arguably, this kind of interaction provides little opportunity for the emerging contractor to acquire the skills.

Further, the high cost of tendering was highlighted by some as *"this person was telling me that they are paying the QSs R3000 per document just to fill in prices (H)* or *"people that set up these BOQs, are getting 10% for doing that. This bugs me. ... This is not empowerment" (F)* and *"especially for people, who are only starting in this industry, they have no money, they must purchase the document, go to QS to price for them, obviously it will be a cost" (K).* The high costs involved with QS consultancy services sometimes act as a constraint for some emerging contractors, particularly the small firms.

Moreover, the findings suggest that preferential procurement creates new business opportunities not only for contractors but also for QSs mainly because of lack of skills and/or experience of contractors. Whilst it can be said that preferential procurement is creating business opportunities for QSs as well, it is doubtful as to whether it's the kind of empowerment that the government envisages. This is because the QSs are already empowered, for example; when they act as consultants to clients. Thus we see some QSs possibly being 'empowered twice' as they engage in private work with emerging contractors.

The findings further illustrate that many targeted beneficiaries are unable to take full advantage of the opportunities created by government's preferential procurement. These

findings have resonance with the argument in literature that preferential policies benefit those who are already in relatively better socio-economic positions more than the neediest (Iheduru, 2004). The findings further support the notion that in any particular social arrangement, some benefit more than others.

It was observed that sometimes contractors pay the QS upfront without waiting for the tender outcome (pay-upfront method) and others pay after winning the tender (pay-after method). Two respondents highlighted the differences by saying;

...I know they (QSs) are rendering a service but with the PDIs, because for me when I used to do a lot of tender pricing for contractors, I would say 'let us get the job first then see how you compensate me' because you can put any price, you see which is not fair on the poor emerging contractor... (H).

At the moment...the lady who is doing my tenders, I will only see her once I have been granted a tender. In the past I had to pay R450 (K).

On face value, the 'pay-after method' appears to be fairer to the contractor than the 'pay upfront method'. However, the latter poses a problem as it may provide incentives for the QS to under price the tender in order to increase the chances of winning the tender in order to secure payment. It is difficult for the (naive) contractor to know whether or not the QS is behaving opportunistically and employing tactics that further the QS's interests rather than the contractor's. This potentially presents a 'hidden action' type problem (Laffont, 2003).

In addition to buying and/or providing professional consultancy related to tender pricing, some contractors also solicit help and/or get involved in projects given to smaller firms usually previously disadvantaged firms. The nature of involvement or relationships varies considerably in terms of type and degree of formality. Some involvements are formal, i.e. where one company plays a mentoring role to another company, *"incidentally, while I was working for X construction, at some stage there was this feeling that things were getting too much for us and we were never going to make it...And they then roped somebody in ... They sort of come in as a mentor company type of thing but will also work on site (U).*

Other arrangements are semi-formal such as, *"out of that project we established a relationship with the two owners of MX which were husband and wife team and both projects were successfully completed and... parted ways and then over about a period of about a year, we kept sort of in contact with MX and we helped them with some tenders and we helped them with various things when they got into trouble on the contractual side we gave them advice... (I).* Still some are informal; *" when I wanted to do construction I volunteered myself for 6 months. I approached this man that 'can I come to your site? You*

don't have to pay me because I just want the knowledge'. ...within 4 months the guy said to me, 'Sisy I think now you can be on your own'... ...I wasn't ready but luckily for me this guy said 'I will give you 2 artisans and 2 operatives and you will get yourself some labourers...' He actually mentored me (K).

6.3 PHENOMENON 6: CONTRACTOR REGISTRATION AND GRADING

It emerged from the analysis that the decision whether to register or not is a strategic decision that firms have to make as registration determines their eligibility to tender for public sector work. The benefits of contractor registration indicated in literature were generally recognised by the contractors interviewed and mirrored in the various statements they made.

There was a consensus (26/28 responses) among respondents that contractor registration has had a positive effect. However, some negative implications for smaller firms were also identified by 3 respondents. The CIDB and contractors' perspectives regarding contractor registration discussed in this chapter are shown in Figure 6.1.

The contractor's views are discussed further below.

Gradual Growth vs. Fast tracking

CIDB contractor registration was perceived as a positive influence in as far as it facilitates gradual growth of firms as opposed to fast tracking. Common comments were expressed as;

It is great for growth especially where you come in say at grade 1 and you work yourself up to grade 8, 9. With that system you will get there not as fast as you want to get there. It has taken us 12 years of growth to get where we are not 2 years (M).

it might work as in not letting people jump from 0 to 9 without having that finance to you know, to do a project and experience as well. It holds one to start from the ground and go up with the stairs... (C).

In contrast, negative cases included perceptions that the grading can act as a constraint on the ability to tender for large contracts. For example;

CIDB 1GB is one of the fiercest, because it's the lowest, it's where the masses are. ...it limits you as the contractor also because you now from 1GB you are limited under R500 000 so your chances to really get into the big ones you know is basically zero because of that number that is attached to you... because I mean really to emerge from 1GB to 2 or 3 is really with that type of competition around at

the bottom...it might take people years and many, many might just drop out that its not worth it because you tender and tender and you get nowhere. Here the CIDB graduation system is very slow (B).

this CIDB thing...it's also one of the constraining things. It constrains one...to a certain challenge not to go beyond...Like the project that I mentioned that was cancelled, it came again on the board but when I went to the board and look...I was shocked to find it's not on my grade anymore, it on a higher grade (C).

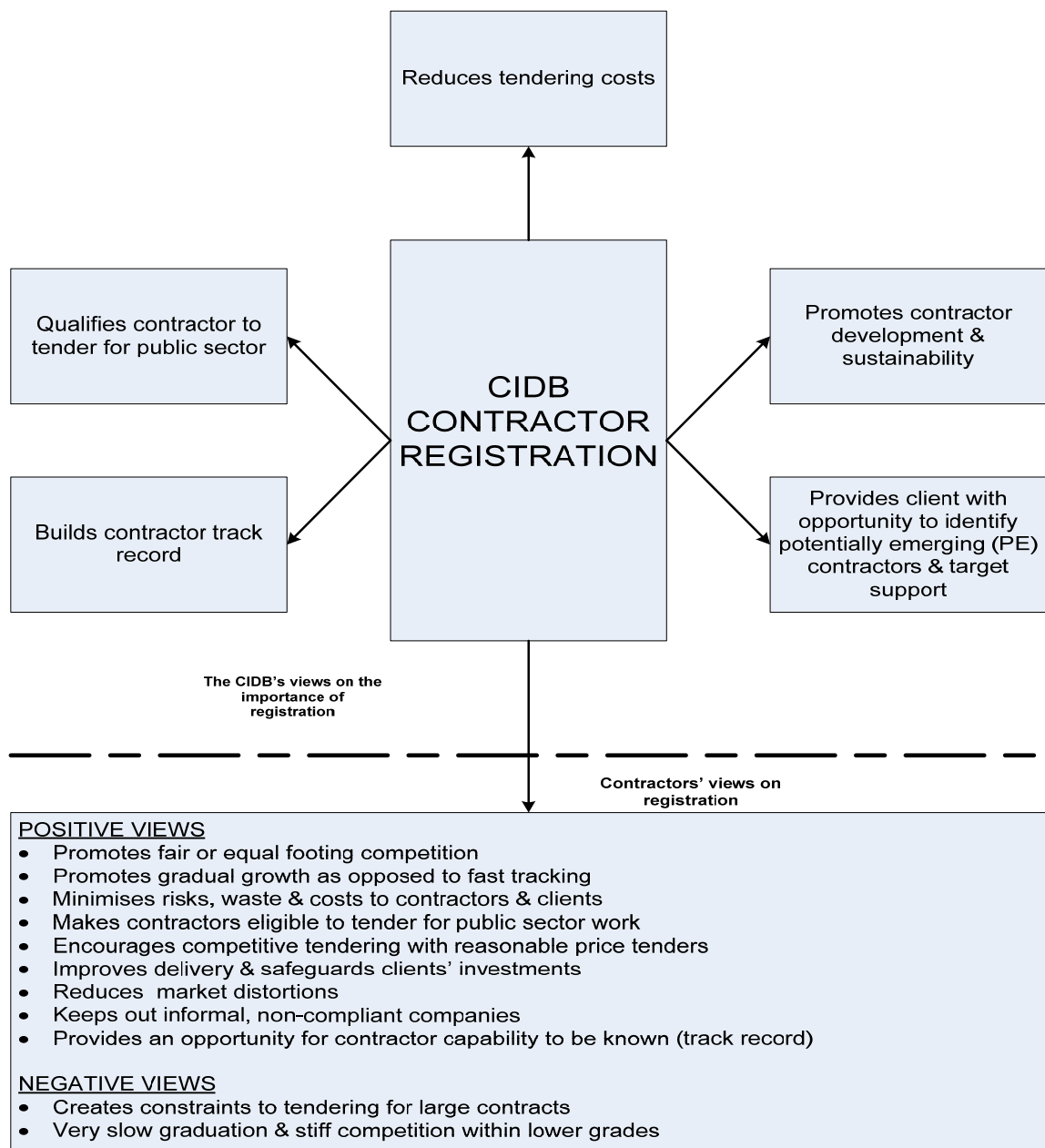


Figure 6.1 CIDB & Contractors' Views on Contractor Registration

now CIDB comes in causing all sorts of problems. Yes, CIDB grading has affected us very, very much. I got letters here that I have written to them stating my

dissatisfaction of the grading they have given me stating I cant sustain my company having GB1...I can't sustain a business if I can only tender for a R200 000 (ZC).

Overall, contractor registration generally seems to have a positive impact. However, some contractors in the lower grades where it is difficult to win tenders see the grading as a constraint. This is because most of them are overly reliant on public sector work and the low chances of winning tenders makes it extremely difficult for them to graduate to the higher grades. This seems to make the problem one of consistent stream of orders. As earlier shown, in order for a contractor to upgrade their designation, the CIDB assesses the contractor's turnover, size of projects handled and working capital. It is for this reason that some respondents such as (B) had reservations that established companies were still getting all the big contracts.

Fair/Equal Footing Competition

The CIDB grading effectively creates market segments for certain projects. There was a commonly held perception that fair competition can be achieved with contractor registration because similar sized firms with similar experience, financial standing and capabilities compete in same grade for the same size of contracts. The registration and grading was seen as a form of ensuring a competitive tendering process that would deliver 'reasonably closely' priced tenders. For example, *"the CIDB registration and grading has helped on the recent R135 million job... We can compete on equal footing I think with all the firms the same size (X) or "yes, it's a very positive thing because...recently... I just did a tender in East London for East Cape government and it's very nice that there is this rating that you know that you're competing against companies with the same capabilities and the same size, similar size so there is a lot of transparency... (ZA).*

The grading was also perceived as demonstrating the contractor's capability to do the work which minimises risk as exemplified by the following narration;

CIDB registration and grading is very important... CIDB grading system has separated the rats from the mice. And I think it is important that you as a client want to know that you (contractor) is going to deliver. And if you look at the reputation of the construction industry, what has happened in this industry? You building a house, is like you going to the casino and putting money into the machine you playing taking on a contractor because you don't know what the abilities of that person is, his financial abilities or his service record. Now with the grading, you know exactly that if a contractor is in this grade, he must have done

that type of work to be able for him to be graded that way. Now if you are going to have a 6GB job or 7GB job and you wanna take a 2GB contractor, you know you are at risk. You know for yourself from the outset that you are exposing yourself to a huge amount of risk because that person hasn't done that kind of work before. (R).

It can be deduced that the CIDB grading is expected to enhance the level of certainty in terms of the quality, competition and outcomes. Contractor registration represents a means to improve delivery and safeguard the clients' investment as contractors are "certified" to do work of a certain size. Unlike in the past, *"people that were not able to do certain size job went ahead and they got awarded the job and then closed doors because they couldn't afford to run a job that size Since CIDB has come in, it has actually given some assurance (M).* Using only graded contractors has the theoretical potential to reduce costs for both clients and contractors. This is because unlike in the past, the capability of a contractor to do a project of a certain size is assessed prior to grading in terms of the finances and track record.

The CIDB's position is that as it gains momentum, contractor registration is likely to reduce market distortions and improve the delivery image of the industry, particularly associated with previously disadvantaged firms. Typical responses which echoed this view included;

CIDB registration helps in that the grading means one can only tender for contracts within a certain bracket. You don't find 'fly by night' companies in that situation (P).

We are quite happy to get involved with the system (grading) because then it excludes people who are not entitled or I think especially with BEE companies. We have come across a couple of situations where BEE companies haven't been able to fulfil their contract and we've had to come in afterwards to complete contracts for them which is more expensive for the client. So if there is this situation where companies are registered and they have proof and that they can work in that category, then it's another reason why we would probably tender a little more because before if you tender for government work anybody can get it whether they can handle it or not. Hopefully with this system, we will be tendering with people that will be able to and we know will put in a reasonable price (W).

The responses highlight the regulatory aspect of contractor registration. The second respondent's view in particular corresponds with that of Winch (2002) that in markets

where power or information are held asymmetrically, the tendency is for poor quality products to drive out better quality goods since the price signals do not work.

Reduced Competition vs. Increased Competition

The study observed that the more established firms were happy to be in higher grades because “ *the higher the grade, the more you can tender but remember, to get a grade 7 or 8 you have to qualify not only financially but also experience wise, workforce wise (M)*. In addition, “*obviously the higher the grade, means you can do more work (higher value contracts) (O)* and “*... there is an advantage because the higher number you got, the more scope you’ve got of tendering because I think that it affects your invite to tender (Y)*. In terms of competition, “*if you are in the grade 7’s you are going to get competitive tendering whereby it is more sort of known professional companies...you are in a bigger bracket. You can manage a contract of R30 million contract...you gotta have everything in place... all your financials, your track record e.t.c in place and in that league...instead of having 20 tenderers, you are going to have 6 or 7 and the chances of winning are therefore higher (S)*.

Moreover, although big contracts are fewer compared to small ones, there are also fewer contractors tendering for them in higher CIDB grades, “*....and as you go up say GB7, you have only about 3 or 5 guys tendering which makes it easier for you to win the contracts instead of competing against 30 contractors you are competing against 5 contractors that’s the difference (P)*. Another respondent explained that “*the difference is, the higher you go, the less people tender whereas if you register in 2GB...you have like I said 60 (Z)*.

Most small firms actively tendering for public sector work are over-reliant on this work resulting in fierce competition in the lower grades particularly at the entry level. As a result, “*the competition is very tight...It’s like playing a lotto... sometimes there are about 50. So you just wonder whether you stand any chance of winning a tender. Some times you wait for about 6 months to get a tender that time you don’t have any work so its very tight, its tough competition (G)*. Small to medium sized firms generally tender for several contracts as a strategy to increase their chances of winning tenders given the increased level of competition.

However, there are cost implications for having many tenders for the same projects. One respondent lamented, “the competition is very tough because sometimes there are like 30, 40 people tendering on one job and it can only be given to one... You have to tender for more projects but you pay dearly for each and every document, sometimes, R30, R50, R100, and R200 (V). To contrast, respondents from large companies generally also

indicated that smaller contracts are uncompetitive for them and therefore seldom tender for such. For example;

CIDB GB9 allows us to do unlimited tenders. But the moment you go to below 6 which is below R10 million, obviously the competition is huge. There are thousands of contractors that are literally able to do that kind of work some of them not properly but the issue is that we cannot compete on an overheard basis with people who run businesses out of a bakkie and own one wheel barrow. So we do not tender for such kind of work. We seldom work under R10 million. There is less (work/projects) but there are also few people going for it. You know, so we don't believe it's necessary to look for a lot of small work in order to meet our turnover goals, we'd rather wait to target the bigger jobs (D).

By design, in order to provide more opportunities through preferential procurement, the public sector breaks down large contracts into smaller packages. As some respondents such as **(ZA)** and **(D)** indicated, there have not been many big contracts coming from the government for some time. Yet, large firms also indicated that they are not keen to tender for small contracts. It can be speculated that if the industry were in a slump, perhaps their strategies to maintain turnovers, would have included going down to tender for jobs in the market for medium and small firms. This assumption is based on what the study by Hillebrandt *et al.*, (1995) found during the 1991 recession in the UK. However, the likely response of the large companies in RSA have been to tender for jobs in the private sector as well where currently work is abundant and BEE requirements are not mandatory.

To gain a better understanding of the level of competition in the various grades and classes of work, one client provided some statistics on the number of contracts they had awarded to registered contractors (RC) in 3 classes of work in the Western Cape Province. The statistics are as tabulated in table 6. 1.

An analysis of the results in Table 6.1 confirms the contractors' views on how fierce the competition is in the lower grades for the GB class of work. Out of the 609 registered contractors (RC) in GB, the largest number, 447 which make up 73.39% are registered in 1GB. Out of this 447, only 30 contractors were given work, representing 6.71%.

The significance of this finding is that despite the highest number of contractors being in 1GB and contracts unbundled, very few contractors in this grade actually get tenders. This *"means that there is a crisis in the industry. What it actually says is that 447 can do contracts that are between R0 and R200 000 but we are in the building industry and we are in serious building business, we are not doing that much work to that value so they are*

not really our client base. I am not saying they are not but predominantly they are not (ZE).

Table 6.1 Contractors Awarded Tenders in the Western Cape

GRADE	Class of Work								
	GB			EE			ME		
	No. of RC	No. of RC given work	%	No. of RC	No. of RC given work	%	No. of RC	No. of RC given work	%
1	447	30	6.71	28	12	42.86	29	8	21.59
2	68	41	60.29	14	9	64.29	19	13	68.42
3	35	28	80.00	7	2	28.57	4	1	25.00
4	18	11	61.11	5	1	20.00	8	6	75.00
5	16	13	81.25	5	4	80.00	3	2	66.67
6	14	10	71.43	5	3	100.00	6	3	50.00
7	8	5	62.50	3	1	100.00	-	-	-
8	3	2	66.67	1	-	-	-	-	-
Totals	609	140	22.99	63	32	50.79	69	33	47.83
Totals without 1GB	162	110	67.90	35	20	57.14	40	25	62.50

RC = registered contractor

Another interesting finding shown in table 6.1 is that there are fewer contractors registered in Grade 1 in the EE and ME classes of work at 32 and 33 respectively compared to the 609 in 1GB. In addition, 42.86% (EE) and 21.59% (ME) of those in Grade 1 of the respective classes got work compared to only 6.71% in 1GB. Unlike in the GB class, the client explained that *“for more specialised contracts such as electrical or mechanical, we use more of those contractors in the lower grades because the work e.g. electrical work is not as huge as general work. These don’t include subcontractors, they are contractors we gave contracts directly as main contractors (ZE).*

It became apparent that having competence and registration in a different class of work can enhance a firm’s chances of getting contracts as the competition in these specialist areas is relatively lower. It was found that some firms in the study consequently employ strategies relating to the development of expertise in classes of work other than general building (GB) works. As presented in chapter five, 4 firms were registered in more than one class of work. A respondent from a firm registered in five classes, explained their competitive advantage as;

We have got five gradings (GB, CE, EE, ME, SA). Normally the contract ... has got a general building but in that general building (GB), there are electrical, mechanical and security components. The contract value is split over these areas... we do all the work, in-house. Our staff component consists of a mechanical guy, an electrical guy, a civil guy, a security guy and a building guy and then they have got all their teams under them. So when we do the job we go for the whole thing because we do everything that is why we don't need a JV. That is why we are competitive in our prices. So if we have maybe tendered lower in mechanical there is still the electrical or building component, the other areas balance, we can still be competitive if we can go lower on electrical, we can go higher on mechanical and in the end we come out okay (S).

The above quotation illustrates how the firm in question has responded to preferential procurement policies and the strategy it has adopted to gain its competitive advantage. The respondent indicated that they are able to spread the risks within the firm and enjoy relatively higher returns without having to subcontract out or engage in joint ventures (go-it-alone strategy). Another advantage for the specialised contractors is that most contractors registered in the GB class do not do specialist work and thus always need a specialist contractor when they win a contract. Many respondents confirmed this by saying;

...Now and then when we do electrical or specialised work, then we will subcontract... (Z).

I subcontract about 50% of the work. I have got electrical, plumbing, painting sub-contractors e.t.c ... (V).

I am registered as a GB so we can do anything but I will not do any specialist work I must get a sub-contractor... Some contractors have specialised in certain things, one is a good sub-contractor for brickwork ... I sent two of them to become electricians and they have become electricians...These two came here as labourers...(N).

From the findings, it can be inferred that contractors who strategically gain competence and register in other classes of work have an increased chance of getting more work than those who register only in the GB works. As indicated earlier, most contractors are entering at the lower end of the GB where competition is high and survival rate low. The results reflect that a firm's position in the market (grade and class of work) is very crucial in terms of its chances of winning tenders and maintaining a sustainable workload. Overall, the results highlight that legislation as an environmental threat to business

creates artificial barriers to competition which keeps some potential competitors out of the market or market segments (Murdick *et al.*, 2000).

6.4 PHENOMENON 7: USE OF HDEs IN SUBCONTRACTING

Although subcontracting is very common in construction, its use is being encouraged in preferential procurement. Clients generally recommend that large companies use contractors in lower CIDB grades as subcontractors on projects. As highlighted earlier, clients do sometimes specify that a certain percentage of PDIs be involved on certain projects. Consequently, many companies adopt a strategy of utilising mainly PDI subcontractors on projects to compliment the number of PDIs in management and ownership positions to meet the BEE tendering requirements. This was reflected by statements such as;

For government work, we have to put forward a procurement plan...its gotta be audited we gotta prove that the PDI portion of our businesses is being adhered to. And obviously a good portion of our subcontractors and some of our suppliers are PDI's and PDE's... (D).

We prefer to subcontract out to 100% ABE companies. We are the main contractors, specialist work, preferably if it is an ABE company that can do that. We employ only 100% ABE subcontractors (M).

We do subcontract quite a lot...I think in general on our score card we are running at about 50% - 60% BEE subcontractors...We are starting to introduce partnering policy with our co-contractors (subcontractors) and our suppliers (X).

The engagement of PDI contractors enhances the overall number of PDI's on a given project which improves the contractor's chances of winning the tender. The significance of a company's preferential procurement policy was highlighted by interviewee (M)'s company empowerment policy which states that;

BEE procurement is a cornerstone of the company's empowerment policy. Total BEE procurement as a % of total is between 50%-60%. The company has successfully implemented this policy and has achieved significant credits from Government Contracts undertaken due to its high procurement targets.

An important implication of the findings is that preferential procurement policies are affecting business relationships in the industry. Business linkages that might not have otherwise occurred in the absence of such policies are now emerging. The findings further reflect that procurement is increasingly assuming a strategic supply chain management function (Saunders, 1997) for both client organisations and firms that wish to do business

with the government. Moreover, an increased use of historically disadvantaged subcontractors reflects government's aim of using subcontracting as a strategic means to promote SMME's. Subcontracting contributes to the creation of business and employment opportunities for historically disadvantaged individuals. That small firms can develop and get established through subcontracting was well summed by two respondents as;

I think sub-contractors and emerging suppliers are developing. You can see it within the subcontractors' prices and relationships that are developing. The way I see it in that market where you see smaller companies growing and developing because you can see smaller companies coming through and developing. Look, the bulk of our work is subcontracting and the smaller contractors are developing through the process (J).

And also the subcontracting route is the best because if you know nothing about the industry, you will be able to learn just the know-how of the industry... for me to grow, I started growing from subcontracting especially if you can manage money because you got have nothing to lose. If you have got good guys who can do the work...to me it has helped out a lot (K).

Government legislation is directly interfering in the ability of enterprises to interact with one another by creating changed behaviour. In doing so, new social and economic constraints are being created to structure the firms' inter-relationships in the industry in a way that government desires. This is a clear demonstration of the influence of the dual role of government as client and regulator in the construction industry in practice.

However, the increased use of historically disadvantaged contractors does not mean that contractors engage exclusively these subcontractors. A well articulated view is;

We make an effort when we are procuring using subcontractors to use BEE ones but not to the exclusion of companies that we have dealt with over the years which happen to be white. We do use a lot of subcontractors but the major issue is 'can they perform when we are doing a R20 million project no matter who we are using?' They must be able to perform within the programme, not cause delays, we cannot afford in our setup to keep carry anyone, it's just too competitive (W).

The above example reflects that the contractors' primary concern is whether or not the subcontractor can deliver within the supply chain. As per standard business practice, previous relationships are important. However, these findings seem to support the "old boy's network" argument by Bates (2001) that the status quo networks that have traditionally excluded MBEs remain a constraint for those that attempt to enter new

markets. As it is difficult to break out of long-term relationships, these networks tend to be resistant to change (Bates, 2001).

While the use of PDI subcontractors seems desirable, most PDI's lack skills, a factor which appears to be influencing some large companies to adopt or increase the use of the management contracting procurement system. As one respondent said;

(the) majority of our work is subcontract(ed), sublet to subcontractors. We don't physically perform a lot of, we do mostly the management of the contract. We undertake the management of the contract. Well, we have a core subcontractors that we use mostly PDIs ... we have experienced difficulties with some subcontractors in not being able to perform to what we require (ZA).

Moreover, subcontracting can also be seen as a strategy to mitigate the relative opportunities for shirking in their performance that would arise if for example, the HDE participated in the contract as a JV partner (phenomenon 6). This was well highlighted by one respondent who said;

We'd rather employ them (PDIs) as subcontractors rather than go into JVs with them... But certainly we'll be bringing in people such as our plasterer and all those kind of specialised contractors who will certainly be working with us, they (PDI subcontractors) must understand because its their business that they will be working on Saturdays and Sundays because if we get penalised, they get penalised too whereas with JV's it is a different story (D).

The findings highlight other advantages of subcontracting such as the ability to pass on responsibilities and risks to subcontractor, greater flexibility and control (Fellows *et al.*, 2002). At the same time, the findings seem to echo the suspicions of Wood (2006) that the management contracting approach used by main contractors simply shifts problems one step down the supply chain to subcontractors.

While the benefits of subcontracting were generally appreciated, there were some apprehensions;

I mean big established companies obviously have lot of small companies even if they are not registered as companies who may be subcontracting to them...subcontracting is a also one hell of pain...because you don't really see those guys who are subcontracting growing. I started also from subcontracting but then I had goals and probably I felt or knew that this is not where I want to go. But go out there and you will find people (subcontractors) who when x (main contractor) moves to Stellenbosch or Somerset they also move. You don't really see them establishing... So how can a subcontractor become established? (C).

...another thing we also have to bear in mind is that our labour gets 'prostituted' a lot by conglomerate companies. Like your rates that you have to tender for as a subcontractor, they basically have a cut off line. For example say for plastering you are working at about R28/m labour only, they will let you come at R21/m (A).

However, as two respondents **(C)** and **(K)** emphasised that if one has goals, subcontracting can help them to get established with time. Another illuminating finding of the study is that whilst it's mandatory for contractors to be registered with the CIDB, it is not for subcontractors. This means that main contractors can use unregistered subcontractors on public sector projects. One client admitted that;

We don't require that subcontractors be registered. ...We are not encouraging it, however we are silent on it because we are more concerned with the person that we have a contract with, that he is legitimate because we cannot control beyond a certain level due to the quantities of our contracts. We don't encourage them to utilise non-registered subcontractors, however we don't enforce or police that. We only police that we use only people who have the licence to trade...(ZE).

As one of the respondents **(C)** indicated, most of contractors in townships who are not registered can only get work by subcontracting themselves to big firms. If most of those registered in GB1 are to be taken as typically subcontractors, then the number of subcontractors must be large. The study is of the view that the use of unregistered subcontractors contributes to the problems of abuse by main contractors cited by some respondents. It is likely that with such fierce competition and imbalance of power, the main contractors could be taking advantage of the small contractors. From the findings, it can be concluded that there is potential conflict between the sub-contractor and main contractor because of different objectives and interests.

6.5 PHENOMENON 8: ENGAGEMENT IN JOINT VENTURES (JVS)

At least 21/28 contractors said they have been involved in JVs before while 7 said they have never. However, all the respondents provided an enhanced insight into the dynamics of JVs within the context of preferential procurement in the construction industry. There were mainly two views held regarding the basis on which JVs were formed, namely, 'voluntary' and 'imposed'.

Some JVs were perceived as freely or voluntarily entered into where potential partners approached each other and negotiated. In such JVs, the criteria for choosing the potential partners are informal based on either casual or established friendships and business relationships. This emerged from respondents' statements such as;

It depends...we always meet on site meeting or tender openings...but we always meet, we chat...we always bump into each. You see who's better that you relate to... (C)

...when I heard about this tender then I thought we belong to SAWIC, the three of us. Then I approached P and then I said to P what about S then P said I think S will be fine then we approached S also...so we went on JV as L construction (K).

On the other hand, some JVs were perceived as imposed upon by clients who insist on certain projects being done as a Joint venture. The criteria for selecting potential partners in these kinds of JVs are more formal and often influenced by client's preference;

...we tendered on a contract...and we were second on two projects and... a company called MX was lowest on both projects but MX development didn't really access to finance, they didn't really have the necessary track record. So the client approached us that they would award the contract to us if entered into a JV with MX. So we did two projects at the time in the form of a JV with MX... The partner was chosen by client,...basically gently pushed us into a JV (I).

The client came to us and asked us to do this building, industrial warehouse and we said it was too big for us so they said that 'we would like you to do the floors' since that is also our expertise and they asked if we would be interested in going into a JV with this established national company. So we said yes (X).

The motivations for clients' preferences for some projects to be done in a JV set-up were mainly to ensure delivery or meeting their own government BEE requirements as one respondent indicated *"I have a situation in East London, when they were building the Casino, the main contractor was one of the national construction companies G but now the client S was asking for a 30% I think of the PDI's to be involved in the project so that they could also meet their BEE policy" (H).*

In some instances, the client's influence in choosing a JV partner was indirect. For example, a client may only stipulate the percentage of PDIs they want involved on the project and leave the contractor to select a partner to be involved in the JV. Thus, having a prior relationship or establishing one before contractors go into a JV is vital. This is because *"going into a JV with someone is a very sensitive issue...I would like to know the person who runs the business on a personal business relationship. It's like going into partnership with someone and we need to have a fair knowledge of the person. A JV is a very sensitive subject; it's almost like a marriage, its going into partnership with someone. And I will never go into partnership with someone off the street (M).*

The emphasis on getting to know the potential partner before going into a JV could be a way to build trust and minimise opportunist behaviours and risks. This has to be the case particularly because problems of moral hazard and adverse selection which are quite pervasive in JVs. Despite the differences in perceptions, entering into a JV at an operating company level is always a strategic decision by the partners involved.

Further, different tenders stipulate different requirements which entail different skills sets and resources for each project. As a result, JVs often require different partners in that; *“there are different criteria for tenders, I think the DPW, their structuring requires different parameters, we have to adhere to their requirements and tender on that basis (J)”. A major problem is that engaging different JV partners on different projects makes it difficult for firms to establish long-term relationships. This works against historically disadvantaged individuals as they are not able to reinforce the skills learnt (CIDB et al., 2005). Because contract periods are also often relatively short, only minimal skills can be transferred within the specific period when the partners work together. Minimal skills transfer is particularly more likely to occur in JVs which are perceived as ‘imposed’ by clients than those regarded as ‘voluntary’ as was also observed by Ofori (1995).*

Incentive and Disincentive Structures in Joint Ventures

The study found that contractors often have different incentives for entering into JVs. According to Morledge and Adnan (2005), the need to form a JV arises from a mutual or combination of objectives held by the partners. In this study, the mutual objective was found to be typically that of enhancing the firms’ chances of winning government contracts and reducing business risk. The reasons and motivations given by the respondents for entering or not entering into JVs are presented in Figure 6.2.

The key points captured in Figure 6.2 are explored further below.

i) Pooling of financial, technical and human resources

Majority of the interviewees cited the need to pool financial, technical and human resources in order to undertake a bigger project as the common reason for doing a JV. Typical responses were;

... we wanted to tender for bigger jobs. I didn’t have the finance and he didn’t have the finance..., if our capital comes together we can tackle something bigger (E). Can I come in here? I think when you come together; you pull everything; your financial, technical, human resources so you can tackle something bigger (F).

The reason for the JV was because it was a big contract to the value of R26 million and the only way to be awarded the contract and to do it was to go into a JV

because I didn't have the financial support to do it on my own so I had to form a JV (P).

Because of lack of finance and skills amongst contractors from previously disadvantaged backgrounds, it is not surprising that most of the historically disadvantaged contractors articulated these reasons. JVs provide a strategic mechanism through which firms can access the opportunities provided by government preferential procurement. As earlier shown, in awarding tenders, the client considers not only the price and preferential points but also the financial backing and expertise.

Although the reasons highlighted above were particularly common among historically disadvantaged firms, they were not exclusive to them. Large contractors equally have a certain limit on the value of any one contract they would take without a JV because they want to limit exposure to risk;

We have just won this contract across the road (airport extension) R660 million that is a JV contract but that's with another major contractor. They will bring a certain number of PDI's and we will also bring a certain number of PDI's. But you see when it comes to R660 million contracts none of these smaller contractors can look at them anyway, with big(ger) risks you're gonna get fewer and fewer of those guys coming to the table (D).

In terms of pooling human resources, JVs provide "extra hands" in the sense that "its not like we didn't have any funds at all, we had but going alone there would probably have been more difficulties in terms of getting the job done on time and all those things such as getting some extra hands which makes things a bit easier for us (C). Also, "it helps because you get two different companies doing the same scope of work but then you have got a larger contingent of manpower whereas one company would have to then go and get more people but with a JV, its two companies sitting with the expertise that they can put in there and do it" (Y).

The 'extra hands' refers to both skilled and unskilled labour. Thus JVs are also seen as a means through which to acquire skills and build the financial base in that "*obviously the JV will benefit us as well because they (JV partner) have got the cash which we don't have. But at the end of the day you build up a record and you build up a relationship as well. With the CIDB, we have got a 6GBPE so if we want to go up to 7, we need to prove that we are financially strong you see so obviously we need a person or institution or company to be that backing for us then we can go up to 7. We are prepared to go into JV's with other companies. Obviously if we want to go bigger, we have to go into JV's.* (O).

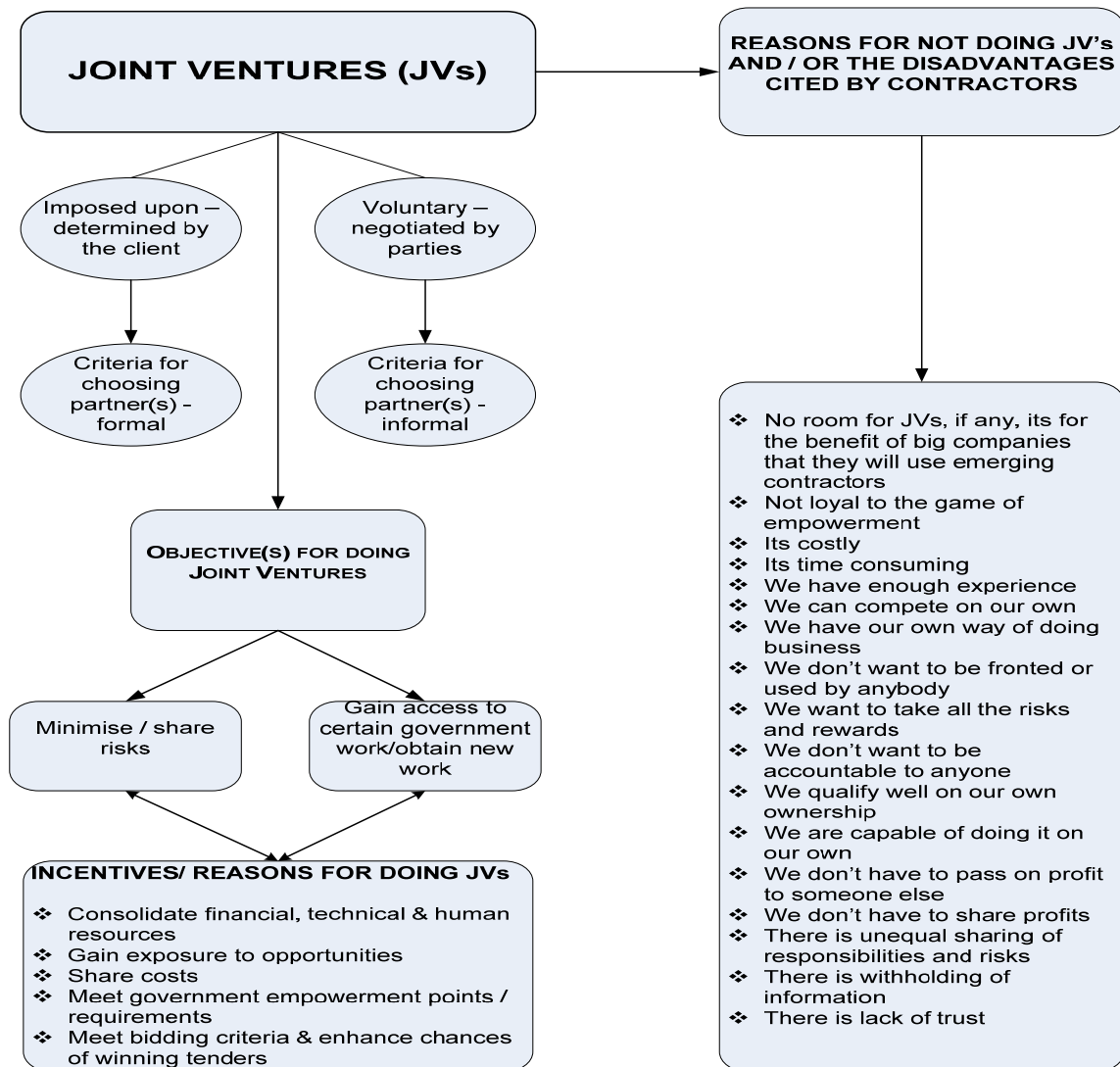


Figure 6.2 Reasons for and against Joint Ventures

ii) Preferential points to boost empowerment target goals

It's noteworthy that one respondent initially said that the reason they were considering a JV was to uplift the PDE. Perhaps the respondent saw it as a corporate social responsibility issue, where being "politically correct" is important for creating a good public image. Otherwise, it is doubtful that uplifting another firm can be the primary reason for entering into a JV. It seems more of a consequence or secondary objective. In fact, the 'real' reason become clearer later in the interview when the respondent said that "...the Architect phoned me, so he said, 'listen, would you be interested in a JV?... there is a thing in Khayelitsha that you can price and there is a black guy here that you need to meet and see if you can JV with him'. Because obviously we couldn't tender on the job on our own because it was invited tenders. It's not a government job, it's an NGO... but now we couldn't go there because we weren't invited but they would entertain us if we came with a black guy, you know with a JV (ZC).

The above quote exemplifies another major reason why contractors, particularly historically empowered enterprises go into JVs. This is to boost or meet their BEE/preferential points and by so doing increase their chances of winning a contract;

on some projects we undertake in JV with B...primarily because they are an empowerment company and it is primarily for empowerment reasons that... if the contract requires a higher empowerment percentage we have made this arrangement with B...(ZA).

The reason for going into a JV was that we needed a certain percentage of ABE ownership before we could qualify to tender for the work (M).

Obviously, in the earlier days when we didn't have this sort of percentage, we went into JVs to boost targeted goals but with our 35% and the percentage of PDEs that we subcontract work, we easily achieve the targets (D).

iii) Power and exploitation inherent in JV set-ups: keeping others out

In a JV set-up, the key questions to consider are; who is at a greater risk of opportunism; who has more to lose and who has more to gain? The study found that JV partners tend to behave opportunistically whether they were in a 50:50 JV or not and whether it is between historically empowered firms and previously disadvantaged firms or not. That there were notable similarities across the board, although opportunistic behaviours between HEEs and PDEs and small firms and big firms seemed more pronounced, is a valuable finding of this study.

Most of the JVs, particularly those 'imposed' between PDEs and HEEs by clients, are in the ratios of 80:20/75:25/70:30 because " *you can only do a 50:50 JV with someone who can bring 50% to the table (D)*. In some cases, "*both companies have done JVs, they have been around for a long time, they understand the requirements of a JV and it's strictly 50:50. We provide 50% of the staff, they provide 50%. We provide 50% of plant and equipment and they do the same and we share 50:50 the profits or whatever (ZA)*. Typically, the PDE is the minor partner and the HEE is the dominant partner in the JVs. Therefore, by implication, a JV works to the advantage of the dominant partner rather than the minor partner as was suggested by some, whose comments included;

...my idea of a JV is that everyone should do his fair share. And you find most of the places where a JV is, sometimes they just take you as a front or you are just there to make up the numbers. That is why I am not really interested (Q).

...but then the black contractor is the minority shareholder in this JV. And in various cases because these guys, the black contractors don't understand the

administration of the construction industry so could many at times be taken for a ride by working in a JV because he basically just becomes the ticket for the white company to gain a big job (U).

Experiences on JVs, my advice is, if companies can stay away from them then just stay away. A lot of companies participate in JVs for the name... because some of these companies don't want you to participate they just want your name... (R).

One respondent explained how BEE is often undermined in JVs;

The white companies have misused that advantage. Most of them are not really loyal to the game of empowering these (black) people. Most of these contractors get into these JV's but they are never on site, you don't see their people on site, skills transfer is not happening at all. So it's just a name ... I don't think that it's that the people (PDI's) do not want to work on Saturdays. It's just that the tendency with white companies is that they know that the profits at the end, you see because they put you outside so that you cannot come on the day when it comes to the profit portion... (H).

On the exploitation of JV partners, another respondent (U) raised a fundamental point that; *"very few of them (white contractors) will actually put 100% effort into training the black contractor because if you train this black contractor, in a couple of years' time he will be your biggest competitor. Now why do you want to train a competitor for yourself? So I don't blame the white firms for that, but they are exploiting the black contractors. I for one am totally against that kind of JV's (U).*

A more balanced yet cautious view of what has been happening in JVs was captured by one respondent as;

...there are probably some successful JVs being done because the prices are good and companies are both making money, industry is doing well and people are more willing to share and give away extra time. For the last couple of years, we have been battling for survival, I do not have time to spend hours every day passing on information, expertise, knowledge but if we were making good money, if we had a lot of very profitable and lucrative contracts then it doesn't matter, then all of a sudden you have got the time. I suspect that there will be some very successful JVs going into the next couple of years in the building industry but I suspect if you go look into the last five years, that wasn't the case. Probably I suspect what has been happening is that the dominant JV partner at the end of the day said 'look, stand one side, you go stand over there and I will make sure we do not lose any money', that's probably what has been happening (I).

Respondents generally indicated that JVs are becoming less popular for them. Historically empowered enterprises particularly emphasised this point. Related comments included;

We have done 1 or 2 projects in JVs with a company called BLW which is an empowerment company... So we are actually moving away from those JVs towards doing the work ourselves...(J).

And with our empowerment now...We are able to do that ourselves now because these empowerment deals have only been in the last year or two they have only been formed... prior to that we have had to do JVs with B e.t.c to get empowerment contracts (ZA).

What is emerging from the responses given by large firms is a change in strategy which entails doing less of JVs as the company becomes more BEE compliant. This contrasts with earlier findings obtained by Gounden (2000) which showed an increased number of JV formations. Some respondents such as **(R)** and **(I)** also pointed out that JVs are time consuming and costly.

iv) Gain-Loss/Reward-Risk and Responsibility Sharing

From a business point of view, JVs were discouraging because “the single disadvantage is that you share percentages... **(D)**. “We do seldom JVs because we capable of doing it on our own. Otherwise you are just passing on your profit to someone else **(ZA)**.It also emerged that, “the JV requires a person you can trust and he must take just as much responsibility as you take. On each particular project you share, it is a partnership. If there is any profit it must be in equal shares The reason for the JV was because it was a big contract to the value of R26 million and the only way to be awarded the contract and to do it was to go into a JV because I didn’t have the financial support to do it on my own so I had to form a JV **(P)**.

Otherwise, “...if they (partner) had been dishonest... then this (JV) would never have been successful but because both parties were reasonable, everything went well, it worked out and its been successful but it was purely by chance **(I)**. It was emphasised that unless “the people you are going into the JV with are trustworthy, people with experience not people with any hidden agendas and motives...because it could easily be where your company could sort of go down if there is no transparency **(V)**.

In some cases, there seemed to be a lack of mutual trust among the partners whereby information was withheld by one partner resulting in the other partner suffering loss. A typical experience was narrated by one respondent as;

We had one JV up in Johannesburg but it wasn't with a BEE company. It wasn't a good experience for us. It wasn't a transparent or open relationship. ...It was a big national (non-BEE) company... and it wasn't a good experience for us... It was supposed to have been a JV, I don't think it was 50:50 but pretty close to that. The partner withheld information, kept cost information from us or hid it and we didn't make the money out of it that we should have. They were not open to us or with us and yet we were actually the people that brought the work...(X).

The case of information asymmetry often results in one party behaving opportunistically and reducing the economic benefits of the other. As Caplow (1994) argues, it is usually the powerful actor in a given system that takes the lion's share. Another respondent narrated how he suffered loss in a JV;

I have been in a JV and I have had a very bad experience. I have lost quite a lot of money...I never got anything on paper because we were friends in the sense that and I did it on a hand shake and your word is your honour... It was a verbal agreement and we shook on it 50:50 and at the end of the day when the contract was completed he told me to swim for the money...It was with an established black company, we have been friends for 30 years...There were no problems working together...except when it came to splitting the money/profits... (P).

The above quote represents a 'negative case' which demonstrates that opportunistic behaviours can occur among partners with established relationships and of similar historical background. One respondent (U) explained that the main reason that JVs do not seem to work within the BEE environment is that most of them are entered into without the contracts being complete. Indeed as the study found, in some JVs, there were no proper JV agreements signed or the JVs were verbal or only in principle as the case with respondent (P) was. Such JVs were based on the 'trust' factor. Respondent (U) suggested that when responsibilities and penalties are laid out at the start of the project, moral hazard and adverse selection problems can be mitigated.

However, literature suggests that even where JVs agreements are signed, moral hazard and adverse selection problems still manifest. The traditional solution to such problems is to have more complex contracts drawn up (Winch, 2002). Nonetheless, even when complex contracts are drawn, some of these problems persist. The reason is that it is not feasible to anticipate every possible problem that might arise and specify how it will be dealt with (Barney and Hesterly, 2006; Ostrom *et al.*, 1993). For Winch (2002), complex contracts often give rise to perverse incentives, generate high transaction costs in attempting to manage the contract and lead to low levels of trust and adversarial relations.

Another drawback of JVs was reported by respondents to be the unequal sharing of responsibilities between or among the partners;

Normally, you find one is doing more than the other that's where the problem lies. **(P)**.

in general, JV's or partnerships never work out. It never works. The problem is like partnerships, number one everyone does not give the same input in the job, everybody does not feel so passionate that you must complete a job on a certain time and the quality and the supervision. You see, once you are alone, if you fail, its because of you but if one partner works...and the other partner doesn't pull up his socks then both of you will fail. Who are you going to blame? It doesn't work...(E).

The findings are consistent with literature that incentives exist for individuals to behave opportunistically when individual inputs to be contributed in a project are costly or difficult to measure (Ostrom et al, 1993). Moreover, one respondent complained that historically disadvantaged partners often take little responsibilities;

The other disadvantage is that because the major contractors, the big companies like ourselves normally take over the lion's share (20:80 or 30:70) is that the responsibility that the (smaller) JV partner brings to the party is seldom in the same proportion because we stand to gain more, they also stand to put less into it... they are there, they are helping out but they do not really take the leading role. They don't take responsibility and when our people might have to work all weekend in order to meet project goals, you might as well find the JV partners do not necessarily follow that line (D).

However, it is unsurprising that historically disadvantaged individuals rarely take lead roles in JVs. This is because the partner taking the lead role has to be registered in a higher CIDB grade and who is usually the dominant partner. That minor partners were only interested in sharing the profits and not the losses was well illustrated;

say if you into a JV on a 30:70, and if you make a profit at end of contract, 30:70% will be split. If the contract is reversed, you make a loss; you will seldom find that the PDI JV partner bringing in the 30% generated loss into it. It seldom happens. Its fine when we are making money, the moment we lose money that's the end of the story because they haven't got it. They don't share the risks, they only want to share the profit...We work with PDEs on that basis but it's becoming less and less important to us because of our own company involvement (D).

to be honest, the experience with JVs especially with B (an empowerment company), we find that their input isn't much at all but they rip the full percentage

of the benefits. So we are actually moving away from those JVs towards doing the work ourselves (ZA).

From the above responses, it makes more sense to be fully BEE compliant than to try and improve the BEE points through JV's because the former reduces risks and one can retain all the rewards. The concerns expressed by the respondents above are consistent with the findings of Muller (2006) that BEE partners in JVs do not share in the risks but do however benefit from the profits. These findings also reflect the view of Thomas and Thomas (2005) that it may be inequitable for a partner who has not taken any risks to expect to share in the gains. Contrary to these views, respondent (R) took a rather extreme position. He argued that;

... I look at JVs as the bigger companies wanting to conform to legislation and . Now in that what are they doing? They are trying to enhance their workload to get these government jobs. They are using the smaller guys for that end. They have had the opportunity all these years to be able to make themselves financially sustainable... Those guys that risk one job with them shouldn't be at risk of losing their livelihoods because if anything, these bigger companies go into these JVs because they want to be commercially more profitable as well. Otherwise they wouldn't be doing it either. I don't think any of them are morally obliged to do it. This is a commercial thing and that in fairness to the smaller guys if I had given anybody advice on that I would say, 'you are part of the profitability but your risk is getting nothing out of it. Don't share the losses of it because the losses of it, they (big companies) manage the thing anyway and that management of that loss is created by those companies. So don't risk yourself or your company to going and putting or share the losses because they ultimately manage those JVs (R).

Overall, historically empowered firms or big firms in the study preferred to have historically disadvantaged individuals within their company structures and/or engage them as subcontractors rather than as JV partners. As for historically disadvantaged individuals, some said they preferred the 'go-it-alone' route. Others said they would like to do JVs provided they are not being fronted by the historically empowered or big firms.

Tensions among competing groups as a result of joint venture formations

Morledge and Adnan, (2005) contend that notwithstanding the mutual objective, firms in JVs have different values and interests. This may lead to tensions and conflicts as suggested by some respondents;

they were bringing empowerment points to the table as such , that is why it is happening less and less because we have got people that work with us that work

in our company who are committed to the same goals and we just don't need a helping hand (D).

You do get conflict. 'I am working for this company, you are working for that company' and that is sometimes where tension comes in (Y).

There is too much conflict in JVs at the end of the day if the report is not good (L).

It appears that some partners tend to shirk in their performance in JVs because of different values and interests and also because at the end of the day the client judges the combined effort of the partners i.e the final product. Further, the study established that JVs between PDEs and HEEs are sometimes a cause of concern for some PDEs. The interactions between these firms create tension between the historically disadvantaged enterprises who tender for projects as 100% BEE firms and those historically disadvantaged enterprises that tender in JVs with HEEs. One respondent clearly put forward this view;

It's difficult to say. You get contractors who have white partnerships... I don't really think that nowadays it matters because a lot of things are happening... If I come in alone and this other person comes in with an established company on the same project and probably I am scoring higher points than them they will probably give the job to them because they have more experience than me. It happens all the time because the client is also concerned with delivery as well... When you go to start questioning that, they will tell you that they have to deliver. I questioned that sometime and they said, 'look we are not a training institute, we are here to deliver'(C).

It appears JVs between PDEs and HEEs introduce a different aspect of competition in the industry. What may be happening is that the historically disadvantaged individuals in either situation feel that the competition is not on an equal footing. These findings add support to Collins (2005)'s claim that often people in conflict tend to think that the other party has more power than them. The clients' concerns with delivery may suggest their inclination to rely on supply chain management to get value for their money.

An Overview of Strategic Interactions in Joint Ventures

The study established that JVs are susceptible to problems arising from private knowledge of an action such as effort and/or a cost or preference parameter by one partner (Laffont, 2003). While both partners stand to gain in a JV, the study found that partners do sometimes have incentives to cheat rather than to co-operate. Barney and Herstely (2006) note that partners may sometimes contribute to the JV skills and abilities of lower quality than they promised. They elaborate that some partners may promise to

bring only its most talented artisans and best trained foremen but send the less talented and poorly trained artisans and foremen to the JV. As one respondent remarked, inexperienced people have very little to contribute to a JV;

Unfortunately, we've had a look at the people who have approached us and they are not qualified enough. We can't, in our industry; you either have to be you know, in control of the full project. If somebody hasn't got the qualification or the experience, it's very difficult to bring them in a JV. I just can't see it working, that kind of experience, you can't impart or teach somebody on or during one project. That's why our emphasis is to create our company to be totally black empowered, black managed. The experience is gotta come from within the company from the batch of youngsters that we are training up and hopefully they all in five years' time be able to run the company. But its experience and you can only get that by working. Somebody who's unfortunately hasn't had that sort of management or managerial experience to go into a JV with them, they don't really have much to offer in the line of contribution to the contract or to the project (W).

Thus one partner who contributed only less qualified manpower may stand to gain more than the other. Incidences were reported of a partner not putting in equal or proportional amounts of work and yet demanding a proportional share of the rewards when it comes to sharing the gains. Some partners take advantage of the costliness to observe the quality of their contributions to benefit themselves. As the study found, some partners, particularly previously disadvantaged firms were reported to often not being able to contribute resources to the partners in the ratio of the JV. For example respondent (D) said that in a JV of say, 70:30 that requires 10 cranes, rarely would you find the minor partner contributing 3 cranes to the JV. The dominant partner would often bring all the 10 cranes and yet, the minor partner would expect to get the full benefits, i.e. 30% profits.

However, it may be argued that while the dominant partner may bring all the 10 cranes required for a project, the minor partner also brings to the JV some manpower and the PDI preferential points that boost the chances of winning the contract. Whereas it's easy to measure the cost or value of the 10 cranes to the project, it is difficult to do the same for the PDI preferential points. One cannot be sure about the extent to which the PDI preferential points equates or does not equate the value of the cranes. Therefore, adverse selection problems are inevitable.

The study uncovered instances where one partner withheld information from the other in JVs. In one such case, respondent (X) reported that the partner withheld all the cost information to the point that they (minor partner) ended up not making any profit at all. To

this effect, the dominant partner was accused of having a policy of 'keeping the minor partner out'. By keeping all the information to themselves, the minor partner could not know how much money was being made and what the profit on the contract was. This way, when it came to sharing the gains, the minor partner would rarely get their full share; a classic manifestation of information and power asymmetry.

In their defence however, dominant partners said the only reason it appeared as though the minor partner was being kept out is because the minor partner rarely pulls their full weight. For example, one dominant partner (**D**) accused the minor partners of not wanting to work on weekends when there was a need to meet certain dead lines. In other words, the respondent implied that the minor partners 'keep themselves out'. This finding indicates different perceptions and perhaps even conflicting objectives among partners. It also suggests high levels of mutual distrust amongst the partners.

It can be seen that even where an apparent consensus appears to exist, the relationship is built on potential conflict. One party controls access to what the other party needs. Whoever controls resources considered culturally valuable will always have an economic advantage over those who desire access to these resources. In this case, the main valuable resources are skills and capital which most small or emerging contractors lack and which established contractors have.

Where there is a conflict of interests, it is likely that the distribution of the benefits from the transaction will reflect the power of the transacting parties (Sen, 1989). Collaborations work relatively well where interests are congruent not where they are in conflict. Arguably, the contractor who controls the valued resources has an advantage in the relationship and they can use that advantage to extract more from the minor partner than they provide in return. This supports the idea that different opportunity costs and bargaining power of different groups give rise to different results (North, 1990). The findings illustrate that strategic behaviours can generate both financial and psychological costs (e.g. barriers to building trust between the parties) in JVs.

6.6 PHENOMENON 9: OWNERSHIP AND MANAGEMENT STRUCTURES

The study has revealed that the trend among most firms is to have an ownership and management structure that is more BEE compliant. There were two 100% white-owned companies in the study which, although have both maintained their ownership structures, employ other different strategies in response to the changes brought about by preferential procurement. One firm engages in JVs with one of its historically disadvantaged sub-contractors and also looks for work in the private sector.

The respondent from this company however said that it is not easy to work in the private sector because;

the difficulty in my firm is that we always tendered for government work like repairs, renovations, alterations and additions to hospitals, schools, etc. and my workmen are all experienced workers in this particular field and to move away from a different sort of pattern which they have been working for the past 30 years is not an easy thing and they also find difficult in understanding the idea why we, that is a firm with a long experience, don't get the jobs (N).

Respondent (N) also indicated that has not considered other options such as changing the structure of the company to include black or female shareholders. The reason was that he has not been able to find a qualified person to take over the running of the company. Perhaps this case reflects a classic business succession problem.

The second company that had maintained its 100% white ownership has had to change or re-invent itself in a way whereby, "15 years ago, WV used to obtain 70% of its work from public sector and 30% was from private sector. We now get from public sector nought, zero. So WV has had to completely change itself, reinvent itself. Its' now doing a bit of work for corporate and mostly private work..." (I). The company in question employed an exit strategy from the public sector into the private sector as it did not wish to comply with procurement regulations enforced in the public sector.

Another respondent who is a black shareholder in a newly formed BEE company pointed out the resistance by some white shareholders to change the ownership and management of companies. The respondent stated that the previous firm where he worked was 100% white-owned and;

...they were talking about change but they never did it because they were very hesitant... 'How can I give away what I have been working on for 30 years?' Now they could see they couldn't do it anymore because it is not going to work because they couldn't tender for government work. What happened is, we tendered on work and we lost about R40 million worth of work because of the structure of the company, the previous company. So I am sitting here frustrated because my price is good but I don't get to procure the work. There were many instances it was just a matter of formality before we get the job... because our track record was in order but our company structure was not right (ZC).

In his account, respondent (ZC) also indicated that with time, as the firm continued to 'lose' jobs, the shareholders decided to split up. This is because one shareholder was now willing to restructure the ownership and management structure (Phenomenon 10) while

the other two remained adamant. The previous company which remained 100% white-owned eventually ceased operation. The one white shareholder then partnered with the respondent in the current/new company which now qualifies as a BEE company as its 33% black-owned (Phenomenon 10). Some black-owned companies have also maintained their 100% black ownership (or at least are changing only the gender profile - Phenomenon 10).

6.7 PHENOMENON 10: CREATING BEE COMPANIES

The study found that one of the significant ways in which business opportunities are being created for historically disadvantaged enterprises and individuals is reflected by the emergence of BEE firms in the construction industry. The majority of these firms are small entrants registered in the lower CIDB grades (Phenomenon 6). The firms that are emerging take a variety of ownership structures with the majority of the 100% women-owned and black-owned located at the entry level where the barriers to entry are lowest.

The increase in number of companies owned and managed by women and/or blacks can be attributed to the fact that clients give preferential points to firms that have women equity and PDIs. As a result, many firms have for the past few years engaged in a number of strategic decisions relating to establishing new firms or re-aligning ownership and management structures of existing firms to include women and/or blacks. The Mama Special “set-aside” program run by one client (for the past three years) aimed at assisting women to enter and ‘compete’ in a historically male dominated industry is a good example of gender preferencing. Consequently, women-owned or women-empowered companies have ‘all of a sudden’ increased in number.

However, although the number of women-owned or women-empowered firms has increased, not all the firms are newly created. Some of the firms have been in existence for many years and have only changed their ownership to grant women partial or complete ownership. This practice resonates with the concept of switches highlighted by Lanoue (1992).

In this study, it was observed that usually, it is the small to medium family-owned firms that have the tendency to change the ownership status by including the female members of the family as part of the shareholders or as 100% shareholders. For example, one medium-sized family-owned company represented by interviewees **(S)** and **(T)** now has 5 shareholders including a mother and daughter who each own 20%. One respondent explained this ‘switching’ behaviour as;

There are also lots of opportunities for women now. That’s the reason we encouraged my mother to get involved. Now my mother owns basically, now she

has taken over 100% of the company. My dad just runs everything from the sites and she does everything as far as tendering is concerned since last year. She gets prices from suppliers, makes sure the taxes are properly done...(Z).

Thus, not only are (White) non-BEE companies using gender but, some 'black empowered' companies are also using gender as a competitive advantage by promoting the female members of their families so as to maintain their position in the marketplace or gain access to some segments of the market. Further, the study also found that sometimes firms conceal their non-conformity to BEE rules as a strategic response to preferential procurement highlighted. This behaviour or action was labelled as **Phenomenon 11**. In the process of switching the ownership, some firms front using women. However, it appears the practice of fronting is an inevitable response as highlighted by one respondent;

When they started with you 'must have women', everyone put their wives. So I said, 'everybody is going to use it because you are making a policy where the man will say 'ok, put my wife, my two daughters, my mother in law, and my mother. I only own or I don't own nothing' but he is the guy who is running the whole thing. The company has been in existence for 15 years. So mum and grandmother and daughters all involved but outside. It's like a window dressing thing ... they are making it work, in other words, the contractors are making the thing work, 'you want it to work, we will make it work'. You must remember, building guys are problem solvers, 'so this is the problem that has come up, so how are we going to fix it?' So I get you... but I don't want to involve you because this is not your game...So I am actually not skilling you further than you should...but I am using her to go fetch the tender documents. I am throwing her in front so that the guys inside the department will see that there is woman involved (F).

One client (ZE) also narrated how several companies have strategically changed their ownership profiles i.e. **Phenomenon 10** to include women but, some fronting in the process i.e. **Phenomenon 11**;

So we are giving more work predominantly to pro-women companies, pro-black companies but there is a problem here. In the construction industry, the industry comprises of people who are strategists...in the survival exercise, they try to speak to the tune of the law because what actually happened, as soon as the government was pro-women suddenly company ownerships changed and became women. What fathers did is they handed their companies over to their daughters or to wives. So their wives may be running in terms of administration, tendering,

documentation, and networking. They are regulars here, you will see the quantities of women at tender openings. But technically, they are not the sound ones so some are using the men and claiming that 'why can't we use the men they have used us for years?' (ZE).

In the recent past, large firms have equally been changing their ownership and management profiles to include women and blacks (Phenomenon 10). For example, respondents **(D)** and **(X)** said that their companies are now 35% and 26% black-owned and managed respectively. Respondent **(W)** indicated that his company is now 33.33% black-owned as a result of a management buy-out;

We've been since (the MD, myself and P), we did a management buy-out in 2000 and at the time we were very aware of the government situation and from that date we've just made it our company policy to be an empowered company and to try and obviously rather than just being a front with a black shareholder we are actually trying to it's a long process but to have the empowerment from within the company, from management side of things. Well, we bought the whole company from the one individual. Three of us, although Mr P is a non-executive shareholder, he was the empowerment side... but what we are trying to do now is to create an empowerment shareholding to actually be with the workers within the company if its not the workers then maybe the management within the company (W).

Aware of the practice of fronting the respondent went on to say;

I think at the moment my opinion is there is still too much fronting where you've got just a shareholder, a name who is not that influential in the company, who doesn't contribute to the company. Personally, I don't like that people try to use that because I believe that the way forward for the company is for the training to come from within the company. Empowerment sector must be trained up to do the work. You can't just put someone in that position. That's why it is not nice to try to force the issue but it will take some time and experience and I think we'll get there (W).

However, despite the respondent's emphasis on empowerment, the new black shareholder in the company is a non-executive and therefore is unlikely to be influential in the company's decision making process. Yet, government's intention of promoting ownership is so that blacks can also be in positions of influence and enjoy full economic benefits from the companies. Another respondent qualified his statement that;

Right now we are still working on a plan as to where we are going. At the moment, we have a 10% ABE ownership in the company. The person, who got 10%, got the

10% not because of the ABE factors but because they are the best asset the company has got. It has got nothing to do with his skin colour. Before 1998, it was 100% white company (M).

Whatever the case might be, the ownership and management changes in large firms have been gradual and not as drastic as the ones in small firms. Generally, raising finance is a major constraint for most black owners to participate in empowerment transactions. As Hirsch (2005) writes, the most obvious scenario is that there could be a discount to the ruling price of the transferred shares and the percentage of black ownership may be a “credit” in dealing with government or the public sector.

In terms of the different types of responses to preferential procurement, large firms seem to have relatively more options at their disposal than small firms. This can be largely attributed to the availability of resources and perhaps also their relative market power/positions. Other than changing the ownership and management structures of existing companies through selling of shares/equity or acquisitions, some shareholders have strategically invested equity in existing black-owned companies (i.e. buy shares) or created new black-owned or black-empowered companies in partnerships with blacks.

For example, one respondent **(ZA)** from a historically empowered company said they had acquired about 30% in a black-owned company. For another HE company, respondent **(I)** said its major shareholders had contributed 60% and a black female who was a 50% shareholder of a black-owned company that split up, contributed 40% and a new black empowered company was created. The new BEE company is 40% woman-owned or 40% black-owned and is registered in CIDB 6GB. The historically empowered companies can therefore benefit from government contracts that the “partially-owned subsidiary” companies created might get. In addition, the historically empowered firms can also access government work by forming JVs with the BEE partially-owned companies. For example;

we do (JVs) on occasions. We have a 30% shareholding in a company called B Construction. So on some projects we undertake in JV with B...if the contract requires a higher empowerment percentage we have made this arrangement with B (ZA).

We have done 1 or 2 projects in JVs with a company called BLM which is an empowerment company...BLM is now a partner in the company...in the future BLM will be our partner as a shareholder (J).

Buying of stakes in smaller previously disadvantaged firms could reflect socio-economic transformation. However, it could also reflect the presence of switches and conduits

associated with preferential policies (Lanoue, 1992). In RSA, companies commonly gain control of other companies through a cascading series of subsidiaries called pyramids (Hirsch, 2005). The study found this trend to be applicable with BEE companies as well. In some cases, the transfer of shares or creation of BEE companies is not as straight forward as explained in the sections above. An example is provided in Figure 6.3, consisting of a four tier company.

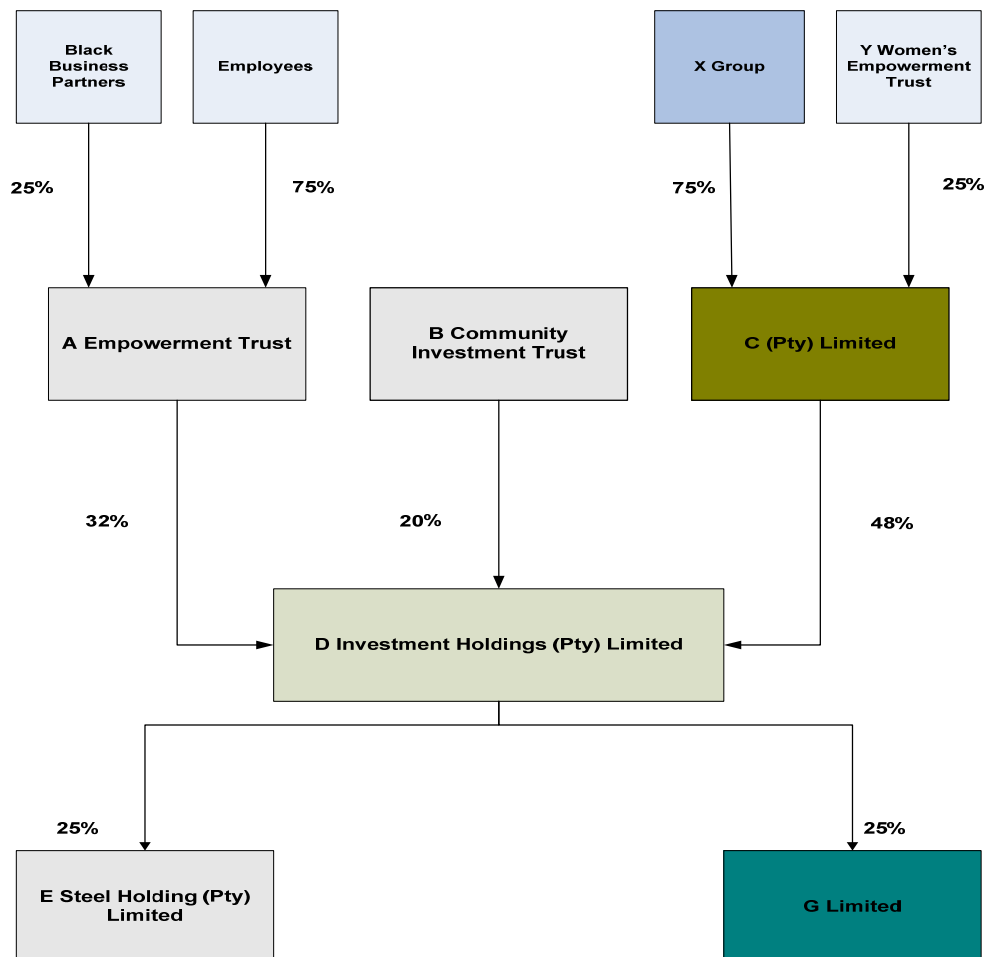


Figure 6.3 Empowerment Ownership Structures

Figure 6.3 illustrates that Company G limited, one of the companies in the study (tier 4) is now 25.1% owned by D Investments Holding a newly registered BEE controlled company (tier 3), which is owned by different shareholders, A Empowerment (32%), B Community (20%) and C Pty (48%) at tier 2. At tier 1, A Empowerment is owned by 25% by Black Business partners and 75% reserved for Employees of E Steel Holding and Company G and C Pty being held 25% by Y Women Empowerment trust and 75% by X Group.

The 25.1% stake in Company G by D Investments Holding represents a further level of black economic empowerment in the pyramid achieved through acquiring black partners in Company G. Although not shown in Figure 6.3, Company G also has interests in other

companies such as a 30% shareholding in an empowerment company B as respondent (ZA) revealed.

Looking at company X Group for example, the lead investor in the BEE transaction in Figure 6.3, it is made up of 3 tiers. It is owned 24% by J Investment, 56% by Employees and 20% by K Foundation. X Group in turn, holds stakes in three companies J Investment (6.7%), L Holding (25.1%), C Pty (75%) and M Holding (52%) as depicted in Figure 6.4.

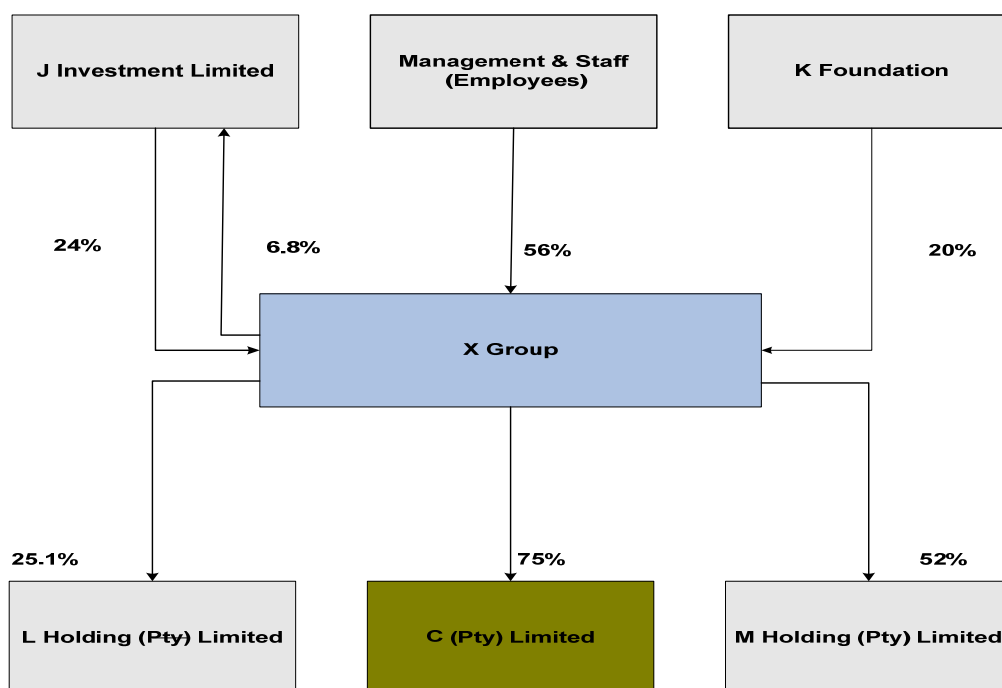


Figure 6.4 Cascading Pyramid of Company Ownership

Seeing from figures 6.3 and 6.4, the calculations of effective black ownership (in terms of voting rights or economic interests) can be complicated depending on the structure of the company being measured. Whilst this aspect is outside the scope of this thesis, it must be mentioned that the main measurement method is the “Flow-Through Principle” and the Codes make provisions for the variation of this principle (RSA, 2007a). This is illustrated below.

In its simplest form, effective black ownership is arrived at by multiplying all the percentages of black ownerships at every company tier. For example, if a company has four tiers with black ownership representation at the different tiers being 75%, 65%, 48% and 32% respectively, these percentages will be multiplied: $0.75\% \times 0.65\% \times 0.48\% \times 0.32\% = 7.49\%$. To obtain the voting rights or economic interests, the 7.49% will be divided by the percentage target for exercisable voting rights or economic interests to be achieved, as set in the sector charter and then multiplied by the weighting points, also set in the sector charter applicable to the ownership criteria being measured (RSA, 2007a).

For instance, supposing the target for economic interest is 30% and weight is 12, this will give: $(7.49\%/30\%) \times 12 = 29.96$. So effectively, the return on black ownership is about 30% and this is the claim of economic benefits that the black owner(s) can claim against the measured company. However, as earlier noted, the illustration used here gives only a basic idea; there are variations or modifications that are done in practice.

There are many varieties of BEE arrangements in practice (Aveng, 2005). The ones illustrated in the study are only a representative of the many forms of restructuring and transformation occurring in the industry and cannot be taken as exhaustive. Overall, for the government and some companies, BEE is a social and economic imperative that is essential for the sustainable development of the country and its future competitiveness.

6.8 AN OVERVIEW OF STRATEGIES ADOPTED BY FIRMS

The study has established that a variety of tactics and strategies are adopted by various construction firms. These collective actions and practices discussed in chapters 5 and 6 have been classified in this study as low-level price based; medium-level project based and high-level organisational based strategies. Despite this classification, the strategies are aimed at an attempt to increase the firms' chances of winning tenders and obtaining access to public sector contracts.

The study observed that the firms' strategic plans mostly tend to be short to medium term because preferential procurement policies and BEE legislation are constantly evolving. For example, during the period 1996 to 1999/2000, preferential or targeted procurement was guided by the 10-point plan. From 2000 to 2003, it was the PPPF Act, 2000 until the B-BBEE Act 2003 was promulgated. However, even with the B-BBEE Act in place as at the time of this study, clients were still using the principles of the PPPF Act 2000. This causes confusion because government has at the same time, been pushing for the implementation of the B-BBEE Act through the codes which establish the seven measurement criteria stated earlier in chapter 2. Figure 6.5 provides a summary of the various strategies and tactics identified in the study.

Various economic sectors including the construction industry have been responding to the government's call as reflected by the development of sectoral transformation charters. Likewise, individual companies are striving to become BEE compliant in accordance with relevant sectoral charters or the generic BEE scorecard. The evolving nature of BEE legislation which seems incompatible at times contribute to firms' inclinations to adopt tactics and strategies through the emergent and/or imposed strategy development route (John and Scholes, 1999) rather than the planned route.

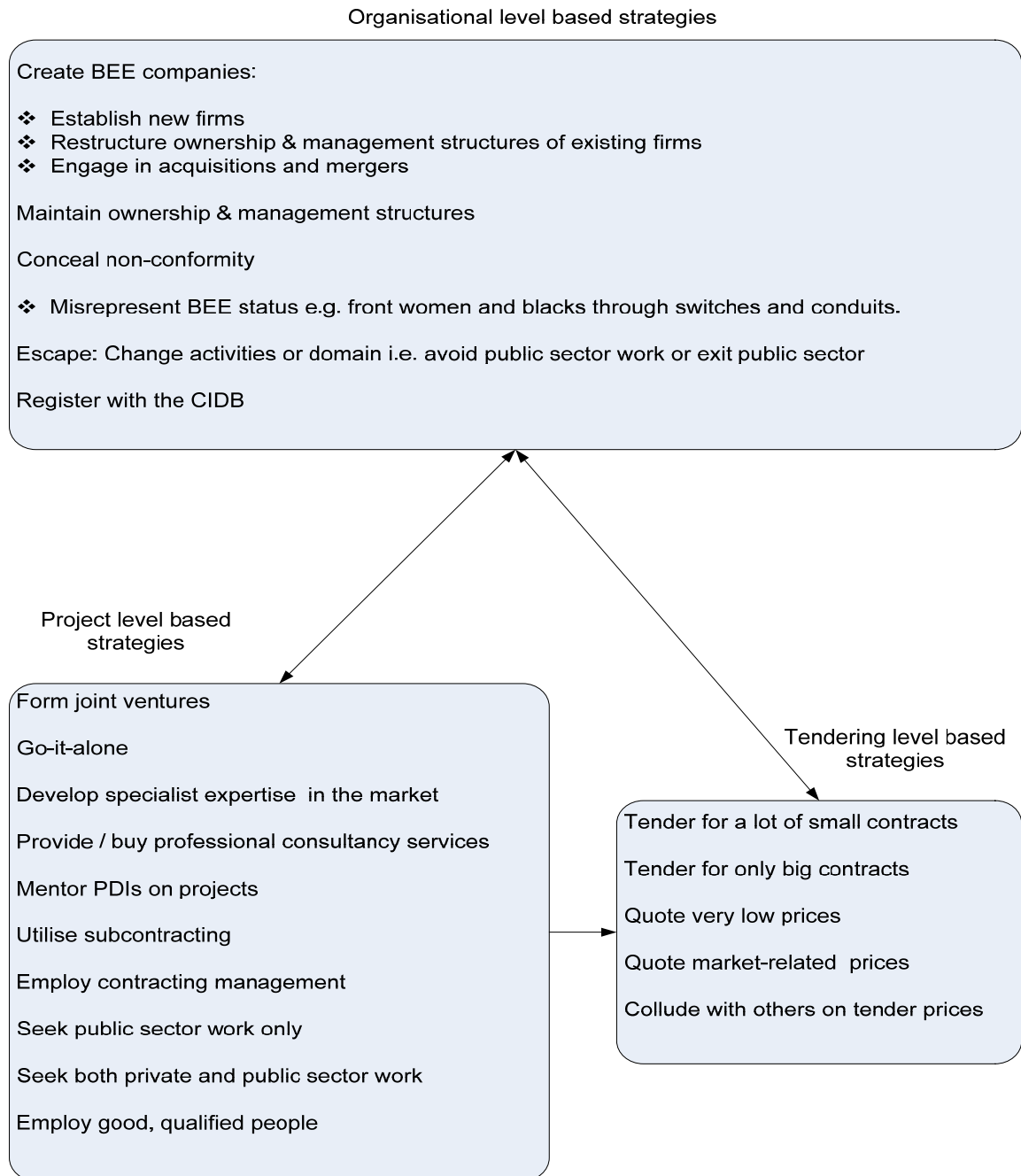


Figure 6.5 Strategies and Tactics Employed by Construction Firms

In the current study, the opportunistic approach to strategy and degree of flexibility varied. Some strategies adopted were found to be more aligned with firms of certain characteristics such as historical background or CIDB grading than others. By way of example, firms with a historically disadvantaged background (e.g. 100% woman-owned), had more incentive to adopt a “go-it-alone” strategy than a historically empowered firm trying to work in the public sector.

Firms with lower CIDB grading and little experience had more incentive to engage the services of a professional QS for tender pricing than those with higher grades and more

experience. These small firms also had high incentive to tender for more contracts and low incentive to seek private sector work as well than those with higher CIDB grading. Companies previously owned by men that had changed their ownership structures to include female shareholders had more incentive to behave opportunistically by fronting the women than those that were established as 100% women-owned in the first instance.

In fact, although all the respondents were aware that fronting was taking place in the industry, they all gave an 'arms-length' experience of it. Those who talked about fronting in their firms said or implied that empowerment in their firms was genuine, not fronting like most other contractors were doing. Their explanations shed more insights into the various ways of fronting as indicated in Table 3.3. None of the respondents said they front or had ever fronted before although they volunteered information about other contractors who they said front. However, this observation does not necessarily mean that all the firms interviewed do not or have never fronted before. The reason they could not say is because the essence of fronting is to misrepresent one's BEE status in order to "circumvent the BEE requirements established by various policies and legislations" (RSA, 2007b). It is hard to prove fronting and even harder for someone to admit guilt to this kind of non-conforming behaviour. Fronting is one of those subtle ways of cheating that cannot be reduced without cost. It is in effect, playing to the rules, rather than to the spirit of the rules.

The study did not also find any shareholders in black-owned firms investing equity in other black-owned firms other than the ones in which ownership changed hands to female members of the families. This is probably expected as there does not seem to be any incentive to adopt such a strategy. In addition, there is also the financial constraint on the part of most black people. However, what was found to be happening is that an existing black-owned firm would split-up and the one or more shareholders continue as a 100% black-owned company while the other shareholder(s) form a new company with other partners who are not previously disadvantaged. Another variation included where a historically empowered firm splits up and some shareholders stay in the old firm while the other shareholder goes to create a new firm with a black partner shareholder, hence qualifying as a BEE company.

The study also found that while some strategies cut across the board, there were differences in the way these were being implemented. Restructuring of company ownership and management structures provides a good example. It has been argued that for big firms, particularly historically empowered ones, this type of change is gradual or incremental. For example, a company may start by selling 10% of the shares to a black

person or woman and then increase the percentage gradually. Interviewee (M)'s company empowerment policy is a case in point as it states under ownership that;

“Currently, the direct shareholding of black persons in the company is 10%. In line with the Construction Sector Empowerment Charter, the company intends to transfer a further 20% to black shareholders, 10% of those being women. This is to be achieved within the times as stated in the Charter”.

It seems that while the plan is medium to long-term, change is being implemented incrementally. This could be because the transfer of ownership in private companies is much more difficult and has to follow the procedure laid down by the memorandum of association (Cronje *et al.*, 2004). However, changing a company's ownership structure could also imply changing the company's identity which makes historically empowered firms hesitant or to drag their feet. This claim holds particularly more for foreign companies. A study by Muller (2006) reports that given the prevailing government policies, foreign companies prefer to enter into JVs with local firms, preferably subsidiaries or former subsidiary companies. Understandably, foreign companies would opt to form JVs because these are *ad hoc* and project specific as opposed to changing ownership structures. Thus, while JVs seem to be a 'passing phase' for domestic firms, they remain a preferred option for foreign firms.

Large companies' reluctance to change the ownership structures could also be influenced by the fact that there is currently a lot of work in the private sector where BEE requirements are not mandatory. Nevertheless, the private sector, particularly large companies have also recently become more aware of government's BEE requirements and tend to shy away from doing business with non-BEE compliant companies. As a result of the Codes, the private sector is also beginning to prefer to give contracts to companies that are BEE compliant in order to boost their own BEE requirement for when they do business with government. This implies that BEE is becoming a real economic imperative which is likely to gain much momentum once the codes of practice are in full force. Whatever the reasons might be, the findings give credence to Quinn (1980)'s argument that strategies are developed in incremental steps.

In contrast, the changes in ownership structures of medium and small firms, particularly previously disadvantaged ones, were found to be less incremental. Most of these firms are family-owned and in some cases firms transferred 100% or 50% ownership to a female member of the family 'overnight'. These findings seem to rather support the notion that large firms tend to adopt more flexible approaches (incremental) than small firms (Hillebrandt *et al.*, 1995). But, they may at the same time suggest that the reason that

small firms can afford to change the ownership structure 'overnight' is because they are more flexible by design than large ones. This line of thought ties in closely with the opportunistic approach to strategy that Stacey (1990) claims to be so frequently adopted by firms in practice as opposed to the formal grand strategic approach.

While gender and race were previously the criteria for exclusion, they have become the criteria for preference in the award of public sector tenders. To this end, the findings of the study suggest that there is, to some degree, a power-balance shift taking place in the industry as a whole. The significance of the finding is that it reflects to some extent, 'organisational, power and behavioural' shifts (Quinn, 1980) occurring in firms and the industry. The amount of women and black participation in the industry is increasing at the workforce, ownership and management levels.

Through preferential procurement, large contracts are being broken down into several small ones which firms that previously would not access them under the traditional procurement system now can (Watermeyer, 1998). This practice exemplifies that large established firms which would previously have gotten the contracts had they not been broken down cannot get them in this new procurement system. As indicated earlier, large firms are not competitive in such markets. While large firms are getting most big empowerment contracts, most of the contracts require the firms to meet government's BEE requirements such as having a certain number of previously disadvantaged individuals. This shift in the power-role relationship suggests a changing racial and gender profile participation.

Although business and power-role relationships are generally changing to some extent, in the bigger scheme of things, the distribution of power still remains largely unequal. In the current set-up, women and blacks do have some leverage which enhances their chances of getting government tenders either as main contractors, subcontractors or JV partners. However, there are many factors highlighted in this thesis that limit the realisation of this potential at various stages. For example, sometimes some female contractors or PDIs fail to get tenders because of lack of finance or skills. At other times, they may be awarded the tender but may fail to perform the contract because of the same constraints and the tender gets cancelled.

The loss of the 'new found power' by women and blacks can also be illustrated by looking at JVs between historically empowered firms and previously disadvantaged firms. By forming a JV, the partners gain access to a contract which, for different reasons, they might not have obtained on their own. However, as earlier indicated; the scale is always tipped in favour of the historically empowered firms as the dominant partner in the JVs.

JVs with a 50:50 share are uncommon between these two parties. The study observed that the previously disadvantaged partner often relies on the historically empowered partner's financial standing and expertise before and after the award of the tender. This means that the stronger financial standing and expertise of the HE partner is essential during the client's capability assessment in awarding the tender and even afterwards as the previously disadvantaged partner still pretty much relies on the HE partner to perform the contract.

The opposite seems to hold for the historically advantaged partner whose reliance on the previously disadvantaged partner is much less after the award of the tender. The historically advantaged partner relies on the previously disadvantaged partner for the preferential points to win certain tenders. But once the tender has been awarded, the previously disadvantaged partner begins to lose ground. Both partners usually bring in manpower. However, at this point, the historically empowered partner is more likely to handle the project by themselves than the previously disadvantaged partner is. As a result, the issue of unequal power persists despite the shifts and changes taking place.

The power-role situation argued above is not much different between women and men in some firms. Clearly, there are different levels of women involvement in companies that they own and/or manage. In some firms, much as the woman may have legally become a 50% or even 100% shareholder or owner, the woman is only just being used as a 'front', with no say or real involvement in the firm. The male counterpart continues to operate the business and sometimes, as one respondent (**ZE**) remarked, continues to "eat" all the money. In a case such as this, there are no material benefits flowing to the woman.

Likewise, there are instances when blacks are put in managerial positions 'just to get the numbers right' without giving them any real influence in the company's decision making processes. All these examples suggest that while the power relations are changing gradually in the industry, those who have been benefiting from public procurement would resist disruptions in the *status quo*.

6.9 TOWARDS A GROUNDED THEORY OF INDUSTRY REACTIONS

The theory which emerged had various components, reflecting the complex nature of the topic under investigation. To enable the reader gain a better appreciation of the contribution made by this study, the various components of the theory are highlighted through the core category, theoretical conjectures and propositions presented below. The substantive theory underpins the understanding of the influence of preferential procurement on the construction industry in terms of the reactions of firms and their implications. It is informed by the triadic analytical framework developed in chapter 3.

6.9.1 Identifying the Core Category

The process of data analysis identified the *business and strategic re-alignment* of construction firms as the core category around which the analysis focussed on during selective coding. The core category integrated all the other categories and subcategories represented by the 11 phenomena as discussed. As such, the various components of the theory reflect these phenomena which are embodied in the integrative framework depicted in Figure 6.6.

Through interpretation, integration and refining of categories, it emerged that firms were re-aligning their strategies and infrastructure to take advantage of preferential procurement policies. Overall, the firms taking part in this study perceived and experienced preferential procurement differently. They employed different strategies in response to a changing public procurement environment. The different strategies can be attributed to a variety of factors including; their perceptions of preferential procurement policies, skills, financial and organisational capacities and level of competition

Out of the 7 historically empowered companies in the study, 5 seemed to have embraced socio-economic transformation as reflected by either the restructuring of their ownership and management structures or the acquisition of stakes in empowerment companies or both. The aim is to become increasingly BEE compliant in order to access more government contracts including the empowerment ones. None of these companies complained about the work load reducing because their BEE status allows them to operate or to continue to operate in specific markets they would not have had they remained non-BEE compliant.

Further, the process of socio-economic transformation means that some blacks are also getting stakes in previously white held companies. Some black-owned companies are transforming either by being bought out or by joining with whites to create new BEE companies. Out of the 19 historically disadvantaged firms, 10 have changed their ownership structures to include women.

All these different strategies are aimed at maximising opportunities and chances of getting government contracts relative to competitors. It can be inferred from the study that firms are adopting new strategies and adapting existing ones as responses to suit government's policy requirements. The strategies used are symptomatic of the *ad hoc* development of practice in industry as BEE legislation evolves. The companies' collective responses generate a range of intended and unintended consequences. The study developed the theoretical conjectures discussed in 6.9.2 as the basis for explaining the observations.

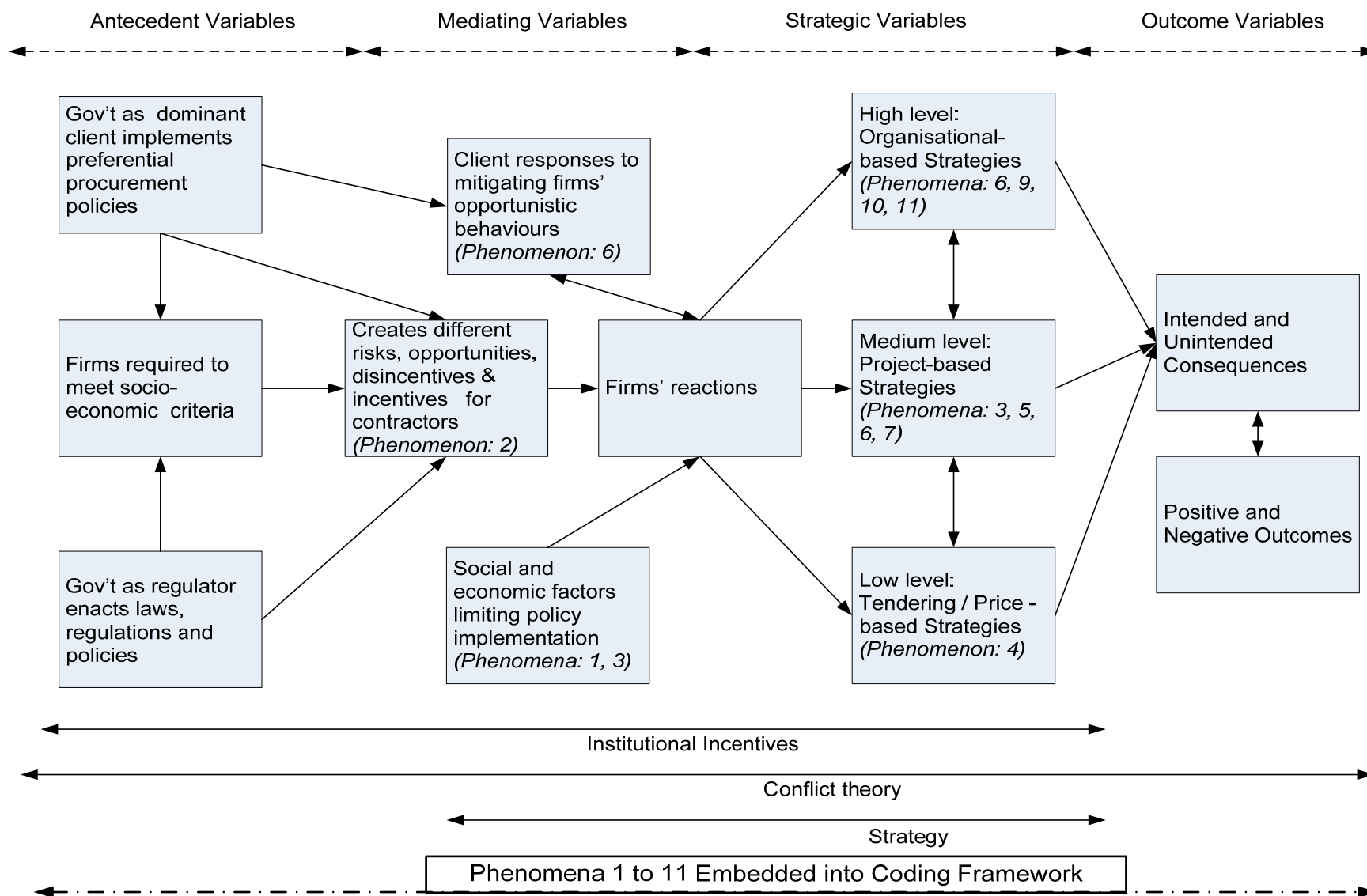


Figure 6.6 Mini-integrative Data Analysis Framework

6.9.2 Developing Theoretical Conjectures

Preferential procurement policies disrupt the industry status quo and disturb the existing patterns of firm interactions as they attempt to redistribute resources by altering the tender award criteria. This creates new social orders which provide different opportunities and incentives to competing groups (e.g. phenomenon 2). Opportunities are increased for some and reduced for others. Therefore, instead of rebalancing existing interests, the effect of preferential procurement policies is to create new tensions, conflicts and imbalances.

Therefore, as firms compete for limited opportunities provided by the preferential policies, and adjust to changes, they employ different strategies and tactics at their disposal (e.g. phenomena 4 – 11). These seek to influence the new social structure created in order to re-direct resource redistribution in their favour. The strategies and tactics include opportunistic behaviours that take advantage of the inherent ambiguity of preferential procurement policies and the implementation thereof (e.g. phenomena 1 and 3). Consequently, some firms exhibit conforming behaviours by complying with the rules, thus supporting socio-economic objectives. Others exhibit non-conforming behaviours and employ avoidance and manipulative strategies (e.g. phenomenon 11) which undermine socio-economic objectives. Under these circumstances, some firms or groups of individuals benefit more than others, resulting often in winners and losers at any particular time. Thus, the reactions of different firms create new tensions and conflicts rather than completely eliminating them.

The changes in procurement policies and the responses of construction firms create a 'see-saw' effect which results in the 're-titling of the playing field' rather than levelling it. As a power-struggle activity, firms attempt to redefine themselves in ways which are suited to their interests aimed at either disrupting or maintaining the status quo respectively (e.g. phenomena 5 – 11). As a result, firms continually seek to re-align themselves or appear to be in re-alignment with government policy requirements in order to exploit the benefits better. These interactions create a cyclic pattern where the participants and modes of operation are constantly redefined, creating new conflicts and tensions in the process (as presented in Figure 6.7). The perverse incentives inherent in the government preferential procurement policy systems limit the realisation of socio-economic development objectives.

In line with grounded theory and as shown in Figure 2.4, propositions emerge or flow from theoretical conjectures. Drawing from the theoretical conjectures developed in section 6.9.2 above, the thesis formulated three propositions as shown in 6.9.3.

- ii *Construction firms that have more resources and greater organisational capacity are better able to adjust to changes in preferential procurement policies than those with less.*

The availability and development or lack thereof financial, technical and human resources is a key factor in how firms adapt to a changing procurement environment (e.g. phenomena 3, 5 and 6). The types of strategies that firms employ are influenced to a large extent by the resources available to a firm (e.g. phenomenon 8).

- iii *Preferential procurement policies have distributive consequences which affect some firms more adversely than others.*

The outcomes of the application of preferential procurement are not neutral. Preferential policies increase risks and/or decrease business opportunities for some firms whilst decreasing risks and/or increasing opportunities for others (e.g. phenomenon 2).

6.10 CONCLUDING REMARKS

This chapter set out to analyse and interpret the results relating to objectives 3 and 4 concerned with identifying and understanding strategies and collective outcomes of firms' responses. The findings of the study indicate that the impact of preferential procurement on construction firms is different depending on the position of the firm in the market. The substantive theory generated reflects that strategies employed by firms are different – some strategies are intended to maintain the status quo while others, to disrupt the status quo. Essentially preferential procurement policies provide different incentives for different contractors and in the process increase the external risks for some whilst reducing them for others.

Companies have been responding to these government policy changes as evidenced by the *ad hoc* practices in the industry and the changes in strategies as they attempt to re-align their businesses with government demands. The study indicates that preferential policies influence contractors' choices of markets i.e. public or private sector or both and of business partners and company structures. Some strategies can be adopted concurrently whereas others cannot.

The chapter has also discussed the outcomes of the various interactions and strategies of construction firms in response to preferential policies and subsequent policy changes. The results suggest that the construction industry does provide a good vehicle through which to pursue socio-economic objectives. However, the outcomes are mixed, meaning that the objectives are being achieved to some extent but not in all cases. The chapter also argued that economic empowerment is often undermined by several factors such as the targeted

groups' lack of finance and skills and opportunistic behaviours such as fronting by industry actors. The overall implication of the findings is that government preferential procurement policies have both intended and unintended consequences and hence positive and negative outcomes.

The next chapter draws the whole study together, provides a conclusion and gives recommendations and areas for further research.

CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS

7.0 INTRODUCTION

This thesis set out to explore the phenomenon of public procurement as a medium for delivering socio-economic objectives in the construction sector. To this end, the thesis has endeavoured to contribute to the development of a theoretically enhanced understanding of the impact of preferential procurement policies on construction firms in terms of their strategies and interactions in RSA. As the objective of this chapter is to draw conclusions and suggest directions for further research, the research context, problem, objectives and questions are revisited. An overview of the conceptual, theoretical and methodological issues is given followed by a summary of the key findings and overall conclusions. The contribution to knowledge, recommendations, limitations of the research and areas for further research are also stated.

7.1 RESEARCH CONTEXT AND PROBLEM RESTATEMENT

Prior to 1994, the majority of the South African population were systematically disempowered through racially discriminatory laws and practices in the areas of employment, ownership, access to business control, skills development and social services (RSA, 2007b). As a result, RSA exhibits huge social and economic inequalities reflected in high levels of poverty, unemployment, skewed ownership and income distribution patterns as well as the supply and access to urban, social and infrastructural services. To address these and other imbalances, the democratic government embarked on a socio-economic transformation of the country through the process of BEE.

BEE aims to draw the historically marginalised groups into the formal economy with the intention of achieving equitable redistribution and contributing to economic growth. The government's argument is that a country that has huge imbalances and underdeveloped human resources cannot compete effectively as a nation internationally (RSA, 1997). Public procurement was identified as one of the principal tools at its disposal because government is a major client of most economic sectors. The RSA government realised that it could use its large public procurement capability to deliver the much needed social and infrastructural services whilst also providing business and employment opportunities for the historically disadvantaged groups. As a result, the government initiated public sector procurement reform in 1995 and began to implement preferential procurement policies in the construction industry in 1996. In the construction industry, these policies are implemented through targeted procurement which unbundles large contracts into smaller units to facilitate participation by HDEs which are predominantly small. Preferential

procurement give preference in the award of contracts to firms that are compliant with government's BEE requirements.

The construction industry was identified by government as having particular potential to play a key role in the socio-economic transformation process in part due to its role in delivering physical infrastructure (DPW, 1999). Chapter one made a case for why the construction industry may be particularly suited as a vehicle for preferential procurement policies. This includes a combination of characteristics such as low barriers to entry, labour-intensiveness, a preponderance of small firms, flexible working frameworks and the government as its dominant client.

Notwithstanding, this thesis argued that the extent to which preferential procurement policies impact on both the established and emerging construction firms and indeed how the firms respond in terms of their actions and practices is not well understood. The current understanding of these phenomena was limited to anecdotal reporting and largely undocumented. Implicit within the argument of the research was that preferential procurement policies are not neutral but, have distributive consequences. A key assumption also underpinning the research was that the implementation of preferential procurement policies yields both intended and unintended consequences. Thus, understanding how these distributive consequences play out in terms of their impacts on the behaviours of the industry forms the primary purpose of this study and the nature of its main contribution to knowledge.

7.2 RESEARCH AIMS AND OBJECTIVES RESTATED

The aim of the research stated in chapter 1 was "to establish a detailed base level understanding of how the construction industry responds to preferential procurement policies and what the consequences of the firms' collective responses are". The intended objectives stated in chapter 1 were to;

- i Find out how construction firms perceive government's preferential procurement policies in the construction industry.*
- ii Identify factors that constrain the implementation of preferential procurement policies in the industry from the perspective of firms.*
- iii Establish the strategies that construction firms have adopted in response to preferential procurement policies.*
- iv Establish the consequences of the collective responses and interactions of construction firms.*

7.3 RESEARCH QUESTIONS RESTATED

As the study aimed to contribute to theory development rather than theory testing, no hypothesis was developed at the outset. In its place, research questions were posed as follows;

7.3.1 Main Research Question

How is government preferential procurement policy affecting construction firms in the industry?

7.3.2 Sub-questions

- i How do construction firms understand government's evolving preferential procurement policies?*
- ii What factors can be identified as constraining the implementation of preferential procurement policies in the industry?*
- iii How do construction firms respond to preferential procurement policies?*
- iv What are the outcomes of the collective responses of construction firms to preferential procurement policies?*

During the research process, the research questions were continually refined in the light of exposure of the researcher to literature. The key points of the literature review are highlighted below.

7.4 CONCEPTUAL AND THEORETICAL ISSUES REVISTED

The study explored a number of theoretical and conceptual issues related to the research problem as discussed through out chapters 1, 2 and 3. An overview is presented in this section.

7.4.1 Theoretical issues raised in chapter one

Chapter one provided the background and initial context for the research. It showed that although the role of the state in the economy is controversial, state intervention is increasingly justified on grounds of correcting market failure and equitable redistribution of income and wealth. The chapter also brought to the fore the idea that preferential procurement policies in RSA are a government response to past racial discriminatory laws and practices that had created huge socio-economic disparities. Thus, one of the biggest challenges facing the government has been how to redistribute resources equitably without damaging the economy.

Chapter one further revealed that the concept of public sector procurement as an instrument of socio-economic policy is a global phenomenon. Many governments have recognised that as large buyers of goods and services from the private sector, they can use that purchasing power to influence the behaviour of suppliers and the direction of the general economy. The chapter justified the research undertaking on the basis of the relative significance of the research area, neglect of the particular problem identified and the potential relevance and implications of its findings.

7.4.2 Conceptual and theoretical issues emanating from chapter two

The researcher was unable to identify a core body of literature directly linked to the specific problem under investigation. However, the research was located within the area of preferential procurement which falls within the broader subject of public procurement of construction services. Chapter two sought to develop an understanding of how the dual role of government as regulator and major client had been studied by previous researchers. It highlighted that many governments in developed and developing countries use public procurement to achieve multiple socio-economic objectives such as affirmative action.

The reason common for adopting affirmative action policies was to achieve greater equality among ethnic, racial and gender groups resulting from historic or current discrimination. By inference, the aim is to influence the allocation of scarce resources among competing users (Fryer and Lorry, 2005). The literature revealed that affirmative action is controversial, and has multiple definitions and meanings. Thus, achieving a consensus on affirmative action is problematic not only at the descriptive level, but also at the philosophical, psychological and practical levels (Edward, 1995). It has been supported and opposed on both moral and economic grounds but, with arguments framed differently to support the interests of different groups.

The literature review confirmed that affirmative action is not a single policy but takes the forms of different strategies, policies and procedures. It is predominantly applied in employment, education and government contracting/procurement where a government can wield substantial influence. In procurement, the justification for preferential policies included; promoting business opportunities leading to long term competitive viability of 'affirmable' firms, developing business linkages leading to greater business potential and skills development, promoting local economic development, enhancing the diversity of suppliers, narrowing business ownership gaps and providing social benefits such as job creation. However, the policies were also criticised for their potential to undermine the primary objectives of procurement relating to efficiency, transparency, competition, integrity and cost and risk minimisation.

A section of the chapter reviewed the experiences of the USA and Malaysia, which illuminated how their governments had actively shaped opportunities for minority groups through preferential procurement policies. The preferential policies in Malaysia have been extensive and are amongst the most successful in the world. A major difference with the USA experience was that in Malaysia, the policies were protected by law from court litigation whereas in the USA, they were shaped by the Supreme Court as they were subjected to challenge and review. It appears the differences in legal frameworks coupled with demographics i.e. large beneficiary group in Malaysia, contributed to the relative success of preferential policies in Malaysia. It also emerged that while the socio-economic status of the Malays has improved through the opportunities created by preferential procurement policies, only limited inter-ethnic social integration has occurred. However, experiences in both countries suggested that economic growth is a vital precondition for sustainable wealth redistribution.

In RSA, the evolution of the concept of empowerment since the 1990s from BEE to the current B-BBEE reflected political concerns that narrow-based empowerment would not benefit the majority historically disempowered people. As a legislation-driven process, B-BBEE consists of a variety of strategies which form part of the government's wider socio-economic development programme. In recent years, the government, in partnership with private sector, has come up with a more comprehensive framework for BEE implementation comprising seven measurement areas. These areas contained in the Codes gazetted in 2007 are: ownership, management and control, employment equity, preferential procurement, skills development, enterprise development and the residual factor. This is where government intends to leverage its purchasing capability whenever it has to make an economic decision regarding; entering into a public private partnership, procurement, disposing state owned enterprises and issuing licences and concessions. The codes take full effect in 2008.

Although voluntary for the private sector, firms are encouraged to apply the codes in their interactions with each other to boost their BEE points when they do business with government. Government's intention is to affect change in the behaviour of firms so as to encourage participation of historically disadvantaged enterprises in the supply chain. Thus, public procurement was shown to play a central role in supporting BEE objectives through preferential policies enshrined in the constitution. Despite all the numerous efforts and developments, the chapter showed that BEE, just like affirmative action and preferential procurement, remains controversial. For example, in the construction industry, the government has taken proactive steps to narrow the gap between emerging and established contractors whilst also improving the overall performance through initiatives

such as the CIDB, ECDP and EPWP. However, opposing views as to whether government intervention will reinforce industry polarisation along racial lines or contribute to unifying the industry exist (Gounden, 2000; Rwelamila *et al.*, 1997).

Overall, the various studies reviewed in chapter two indicated that preferential policies yield mixed results. Positive outcomes included increased business and employment opportunities and skills development through joint ventures and subcontracting arrangements. Negative outcomes included opportunistic behaviours relating to the practices of fronting, switching and conduits which undermine government policies. The chapter argued that despite the construction industry being amenable to government policy, preferential procurement remains a contested concept. It concluded that there was no coherent theoretical framework to guide preferential procurement policies in practice. This identification of gaps and bias in the existing knowledge oriented the research towards a grounded theory approach. Chapter two also did not suggest any hypothesis as would be the case for a hypothetico-deductive research approach. Rather, it justified the development of the analytical framework discussed in chapter three.

7.4.3 Development of an analytical framework in chapter three

To establish a greater understanding of the responses of construction firms and their collective outcomes, the thesis proposed an analytical framework. This was positioned at the intersection of a triad of perspectives, namely; institutional incentives, conflict theory and strategy, to facilitate the exploration of the research problem both conceptually and empirically. In so doing, the research attempted to apply understandings derived from these perspectives to preferential procurement policies in a construction context. The interdisciplinary approach was justified on the basis of providing an appropriate framework for generating questions for interrogating a 'wicked' problem and analysing the data aimed at developing new configurations of ideas.

Theories of Institutional Incentives at a Glance

The first component of the framework was drawn from the institutional incentives perspective which is itself derived from a combination of theory of institutions and of incentives. Institutions were taken as the formal or informal rules, norms, values, strategies that provide some regularity of behaviour in human interaction through the provision of incentives and disincentives (North, 2005; Ostrom, 1999). Firms subsequently emerge for the purpose of taking advantages of opportunities created by the incentives and disincentives provided by the institutional framework. Thus, institutional frameworks define and enforce property rights that form the basis of transactions.

Theories of incentives centre around the question of what makes people or firms act in a particular way in an economic or business arrangement. Hence, institutional incentives theory assumes that incentives are the result of the rules used to reward and constrain the benefits and costs of diverse activities. From this perspective, asymmetry of information, power and resources among participants provides opportunities for some to use these to their advantage to gain personal benefits. A key issue that emerged was one of how change in the 'rules of the game' i.e. preferential procurement might influence the actors.

The literature indicated five possible organisational responses namely acquiescence, compromise, avoidance, defiance and manipulation. The eventual exhibition of similar features by organisations was proposed by some as a likely outcome (Di Maggio and Powell, 1977). However, the research concluded that the various options and/or views suggested that there was no consensus on a general pattern to any given change and that the different options were indicative of transitory stages in a process rather than discrete end points.

Elements of Conflict Theory at a Glance

Conflict theory was used to complement the theory of institutional incentives. Conflict often arises when people attempt to alter the ideas, beliefs or actions of others (Fryer *et al*, 2004). Therefore, conflict as a divergence of interests, objectives, motives or priorities occurs at various levels including inter-group, intra-group, inter-personal and intra-personal levels. The current research identified that previous research in construction management had largely focussed on conflict at the project level in the context of contracts. Therefore, the research conceptualised conflict not only at the project level but also organisational, ethnic and national levels, contending that project-level conflict was merely an expression of the underlying issues at these higher levels. It was also highlighted that conflict has both positive and negative values.

While there are many theories of conflict, collectively, conflict theory sees society as constantly changing in response to social inequality and conflict. It deals with the information, resources and power exploitation that exist in social structures and how inequality is maintained. Conflict theory emphasises competition over resources as a source of conflict and assumes that some groups benefit more than others in an existing arrangement. Conflict theorists oppose inequalities for impeding the optimal functioning of individuals and society. In relation to preferential procurement, the research intended to explore how the interests of the different groups manifested themselves in the construction industry.

Theories of strategy at a Glance

The third component of the analytical framework was strategy. The concept of strategy focuses on how organisations adapt to a changing business environment, which in this research, was a changing public procurement environment. From the literature, the research assumed that the strategies of the firms were inferable from their actions and practices. Therefore, strategy in the context of this research was perceived as a 'pattern' although strategy as 'plan' was the original approach to strategic management and still dominates the literature.

Literature revealed that while some authors have acknowledged the usefulness of strategic planning to construction firms, there were opposing views. These views have mainly advocated for less formal, emergent and flexible approaches particularly for entrepreneurial firms to be able to adapt quite quickly to unanticipated change. The research took a combined institutional and conflict view of strategy. It attempted to establish what strategies firms were employing to take advantage of the incentives and disincentives created by preferential procurement as the BEE institutional framework evolves.

Integrating the three perspectives presented a relatively "well-rounded" analytical framework for exploring the research in an empirical study. It also provided a multiple perspective from which the substantive theory was built.

7.4.4 Research Philosophical and Methodological Orientation

Chapter four presented and justified the methodology including making clear its philosophical underpinnings. An analysis of the research problem pointed the research towards a primarily qualitative research approach since the research variables were 'messy' as opposed to simple, easily identifiable entities. In addition, the aim of the research was hypothesis generation and theory building rather than hypothesis formulation and theory testing.

Ontological and Epistemological Positions

The research was rooted in social constructionism which largely sees people as constructing their own reality and encourages a more narrative approach to research that seeks a holistic view to understanding a phenomenon (Mir and Watson, 2000; Crotty, 1998). It took a moderate constructionist view which acknowledges that while knowledge and reality are largely socially constructed, some reality is not. The research was interpretivist rather than positivistic. Consequently, the research methodology reflected fundamentally phenomenological underpinnings. The chapter justified its choices but, it

also showed that both phenomenology and positivism have weaknesses and strengths and each one is relevant under different conditions.

Grounded Theory: A Methodology and Method of Data Analysis

An emergent research methodology design was adopted, guided by the research questions and, influenced by the ontological and epistemological assumptions. Chapter four justified the chosen methodology primarily on the grounds that a review of literature could not identify a coherent and generally accepted theoretical framework was guiding preferential procurement in practice. The lack of a coherent theoretical framework also implied a weak basis for hypothesis formulation (Remenyi *et al*, 1998). Therefore, grounded theory both as a methodology and method of data collection and analysis was selected as the most appropriate for conducting research aimed at developing theory (Strauss and Corbin, 1998). That grounded theory had the potential to take into account the local groundedness of the phenomena under investigation (Cresswell, 1998), which is highly context specific provided further justification for its selection.

Theoretical sampling, a form of purposive sampling; a common practice with grounded theory, was utilised. The methods of data collection included semi-structured interviews with 28 contractors from 26 construction firms and 5 individuals from 4 client organisations. The interviews were supplemented by documentary evidence such as company reports. The interviews were digitally recorded and transcribed so that they could be analysed critically and comprehensively. A modified form of the codification process of open, axial and selective coding proposed by Strauss and Corbin (1998) was used as discussed in chapter four. The key findings that emerged from the data are summarised below.

7.5 SUMMARY OF KEY RESEARCH FINDINGS

The research did not develop a single distinct theory. Rather, the theory had several components which were dealt with in chapters five and six. These were then brought together in chapter six where they were discussed in relation to existing knowledge (i.e. within the triadic analytical framework). The final section of chapter six also presented the theoretical conjectures and propositions developed in the research.

The sub-sections below provide a summary of the phenomena which emerged from the data that made up the various components of the theory. In this section, the phenomena are labelled slightly differently from the way they are in chapters five and six to highlight their significance i.e. what they represent or what is central in the data. A summary narrative of the theory is also given at the end of the section under 7.5.4

7.5.1 Objective one

Phenomenon 1: Inconsistent Implementation of Preferential Procurement

It emerged from the analysis that there were *variations in the way preferential procurement policies were being implemented by client bodies*. Four main variations observed related to the following: i) financial threshold to which the 80/20 and 90/10 points-scoring tendering systems apply; ii) splitting of the 20 and 10 points allocated for socio-economic goals among various social aspects; iii) tender estimate acceptance margin; and iv) the implementation methods i.e. one major client runs a “set-aside” programme for women-owned enterprises only while others do not.

This observation was attributed to the subjective interpretation of the PPPF Act 2000, reflecting the difficulty of reaching consensus at the descriptive level for redistributive policies. This phenomenon confirms the general findings about the inconsistent application of preferential procurement policies by clients (CIDB, 2004), which may impact negatively on contractor participation particularly emerging enterprises.

Phenomenon 2: Opposing Contractor Perceptions of Preferential Procurement

The second phenomenon emerging from the analysis was that *there were both negative and positive perceptions of preferential procurement policies held by the respondents*. The preferential policies were perceived as providing incentives and creating opportunities for some and disincentives and reduction of opportunities for others. These opposing views were explained mainly as resulting from the differences in perceptions of preferential procurement as policy and as practice and also whether one was from the target group or not. The findings highlighted the ways in which contractors constructed their realities with regards to preferential procurement and also the inherent conflict between different groups who compete for limited resources.

These findings further confirmed the controversies of preferential procurement in its quest to re-balance the existing interests i.e. ‘two sides of the coin’ concept. To a large extent, the findings around phenomena 1 and 2 addressed the research question of how construction firms understand preferential procurement policies in the construction industry in terms of their perceptions of the rationale and implementation.

7.5.2 Objective two

Phenomenon 3: Socio-economic and Political Militating Factors

It was found that *finance, skills, tendering process and contract management, fronting and ‘locality’ problems hampered participation in public procurement, particularly of historically disadvantaged enterprises and individuals*. These combined factors militated against

historically disadvantaged enterprises, which are predominantly small firms, from fully exploiting the opportunities provided by preferential procurement. Lack of skills and finance undermine government socio-economic objectives. It also affects contractors' CIDB grading because assessment depends on financial and work capabilities. Further, public sector's inconsistent work flow and delayed payment had negative impacts on the contractors' ability to create jobs and on financial sustainability. For small firms over-reliant on public sector work, these factors cause some firms to close down.

The lack of a regulatory mechanism by public sector clients attracts job seekers and/or business entrepreneurs with little or no skills into the industry. Since preferential procurement policies were introduced, thousands of BEE companies have sprung up regardless of whether the key person is competent. In this study the practice of fronting was found to be both a constraining factor to the implementation of preferential procurement policies and a strategic response by some firms i.e. Phenomenon 11 discussed under objective 3. The locality issues that emerged were a combination of community problems such as lack of skills in local area and strategic behaviours of community members. These affected the contractors' ability to deliver on time, within cost and to quality and in the process undermine government's objectives of socio-economic empowerment.

The findings addressed research question two related to what the main factors constraining the implementation of preferential procurement policies in the construction industry were. The findings related to phenomenon 1, 2 and 3 confirmed the findings of Manchidi and Hammond (2002) who identified a number of constraints to the implementation of preferential procurement such as poor targeting, inadequate planning at community level, bulky tender requirements and conditions and absence of tight monitoring and evaluation procedures. This research attempted to show how phenomena 1, 2, and 3 to a large extent, influenced the way firms interacted and the type of strategies they employed in response to preferential procurement policies.

7.5.3 Objectives three and four

Under *strategic variables*, objectives 3 and 4 were concerned with establishing the different strategies that construction firms were employing in response to preferential procurement policies and the consequences of their collective responses. Strategies were deduced from actions, reactions and practices. Objectives 3 and 4 though stated separately in chapters one and three, were analysed jointly in chapter six and embodied phenomena 1, 2 and 3. Objective 4 flowed directly from objective 3 and thus attempting to discuss them separately would have been difficult and repetitive. The key findings are summarised below.

Phenomenon 4: Strategic Interactions within the Competitive Tendering Method

It was found that the lowest tender price principle used in preferential procurement encouraged opportunistic price-based strategies predominantly among historically disadvantaged enterprises, resulting in inefficient outcomes. These contractor price-based strategies included quoting low unprofitable prices, collusions among contractors and with client's consultancy team members in order to increase chances of winning the contracts. It was however noted that the implementation of preferential procurement policies was evolving for the better as the lowest price tender was no longer always necessarily the accepted tender. Clients were shifting towards more value for money criteria rather than lowest price.

Phenomenon 5: Utilisation of Consultancy and Mentoring Services

It emerged that the lack of technical skills by most historically disadvantaged contractors meant that some firms, particularly small and/or newly established firms often engaged consultants in pricing tenders and/or managing projects. Small and/or new HDEs were more likely to face problems with pricing tenders but the high costs involved often acted as a constraint to their utilisation of such services. Utilising consultancy or mentoring services whether formal or informal, as a strategy, enabled those without the skills, mostly small and new HDEs, and those with the skills predominantly historically empowered firms or individuals, to access opportunities provided by public procurement. It was suggested by the researcher that professional consultancy and mentoring could act as a means to transferring skills to previously disadvantaged contractors.

Phenomenon 6: Strategic Role of Contractor Registration and Grading

It was observed that *registering with the CIDB was a strategic decision as registration conferred eligibility on the contractor to tender for public sector work*. The market position of the firm i.e. grade in which a firm was registered played an important role in determining the chances of winning contracts. Although there were relatively fewer contracts in higher grades, the competition was also lower which increased the chances of winning the contracts. Most historically disadvantaged enterprises were registered in the lower GB class of work, because of lack of skills and financial backing, where competition was stiff and survival rates were poor. A related observation was that some contractors were developing expertise in other classes of work than GB in order to increase their competitive advantage. This resulted in some firms strategically registering in other classes of work as well such as CE, ME, EE in order to level off the stiff competition.

The majority of respondents perceived contractor registration and grading as having a positive effect on the industry such as promoting fair competition and gradual growth of

contractors. However, the grading was also perceived negatively by others as it created artificial barriers to market segments and limiting the size of work they could tender for and thus impacting on their growth. The increased number of tenders in the lower grades implied high costs not only for contractors but also for clients. The analysis concluded that the CIDB registration acts as the first stage of a two-stage tender process with potential to minimise opportunistic behaviours and risks through the 'certification' of contractors for contracts of certain values.

Phenomenon 7: Increased Use of Historically Disadvantaged Subcontractors

The analysis showed that *the use of historically disadvantaged subcontractors enhanced the overall number of black people or historically disadvantaged individuals on a given project which was perceived as essential to improving the contractor's chances of accessing empowerment contracts because of the points system used in tender adjudication process.* Subcontracting is an important element in preferential procurement as some contracts specify that a certain percentage of historically disadvantaged subcontractors and individuals should be engaged on the project. The greater use of historically disadvantaged contractors encouraged by preferential procurement as a way of enabling their participation seemed to be encouraging the use of contract management type of procurement by large contractors.

Unlike main contractors, it emerged that contractors were not required by law to be CIDB registered in order to participate as subcontractors on public sector projects awarded to main contractors. It was suggested that this factor coupled with the imbalance of power and large number of small contractors could contribute to the abuse of subcontractor by large contractors.

Phenomenon 8: Changing Perceptions of Engagement in Joint Ventures

The analysis revealed that *joint ventures between BEE and non-BEE partners were perceived as a common means for pooling resources and/or meeting empowerment targets for bidding criteria to undertake a project and increase the chances of winning the contract.* It was deduced that joint ventures were often established on potential conflict because of different motivations, skills levels and strategic and opportunistic behaviours of partners. Therefore, while joint ventures in some cases acted as a means of transferring skills, in other cases, they served as fronts. It was concluded that as a strategy to access certain segments of the market, joint ventures remained a preferred option for international firms but were perceived as a passing phase for domestic firms.

Domestic firms were not generally keen on doing joint ventures for different reasons. For historically disadvantaged firms, their contention was the imbalance of power between the

dominant and minor partners which led to abuse. Established firms, particularly historically empowered firms suggested that they were shifting their strategy from joint ventures to transforming their companies instead i.e. strive to become BEE compliant and tender on that basis. Their reluctance was based on the shirking tendencies of BEE partners in joint ventures. These views highlighted that the incentives and disincentives provided by an institutional framework are different for various participants.

Phenomenon 9: Maintenance of Ownership and Management Structures

It was observed that *black-owned companies were more likely to maintain their ownership and management structures in order to secure higher points for equity during the tender process than white-owned firms*. Many black-owned firms had maintained their 100% black ownership (or at least were only changing their gender profiles as indicated in Phenomenon 10) as a strategy aimed at maximising their chances of getting government work. Having a company structure that reflects a high number of blacks and women in the ownership and management structure had been crucial because until recently preferential procurement had been implemented on narrow-based criteria. Chances of getting work from public sector was said to have reduced for non-BEE firms. Non-BEE companies that maintained their ownership structures employed strategies as such as joint ventures, subcontracting, mentoring, looking for private sector work or exiting the public sector altogether. The findings highlighted the incentives and disincentives built in the preferential procurement system.

Phenomenon 10: Creating BEE Companies

Phenomenon 10 suggested that *there was an emerging trend of creating BEE companies either through the creation of new firms or restructuring of old ones to become more BEE compliant*. Most of the new firms owned and managed by women or blacks were mostly registered in the lower CIDB grades. The re-aligning process of ownership and management structures in existing firms to include women and/or blacks was a strategy to enhance the chances of accessing empowerment contracts. Small to medium sized firms in particular showed a higher tendency to change ownership status by including female family members as shareholders or even making them outright owners. Large firms, particularly historically empowered ones were also changing their ownership and management profiles but did this through management buy-outs, mergers, acquisitions, co-option of black shareholders; equity investments in existing black-owned companies and/or creation of new BEE in partnerships with blacks, often as partially-owned subsidiary companies.

Ownership changes in large companies were found to be more gradual and less drastic than the typically family-owned and managed small firms. In attempting to strategically re-align their ownership structures, some companies were fronting (**Phenomenon 11**). *This phenomenon was about the concealing of non-conformity by some firms through the use of switches and conduits i.e. blacks and women individuals or front companies to gain access to public sector contracts. Fronting was understood better as a form of avoidance strategy to disguise non-conformity to BEE requirements in order to maintain the status quo.* It emerged that there were various ways of fronting.

The interactions, responses and consequences were observed to have a cyclic effect as shown in Figure 6.7. The findings suggest, at least in part, that some of the industry's structural problems are being addressed and some of government's wider socio-economic objectives being achieved through preferential procurement. They addressed the research question related to how firms were responding to preferential procurement policies and the consequences of their collective responses.

7.6 OVERVIEW OF THE SUBSTANTIVE THEORY DEVELOPED

The substantive theory, composed of various components, was generated through an iterative research process depicted in Figure 7.1.

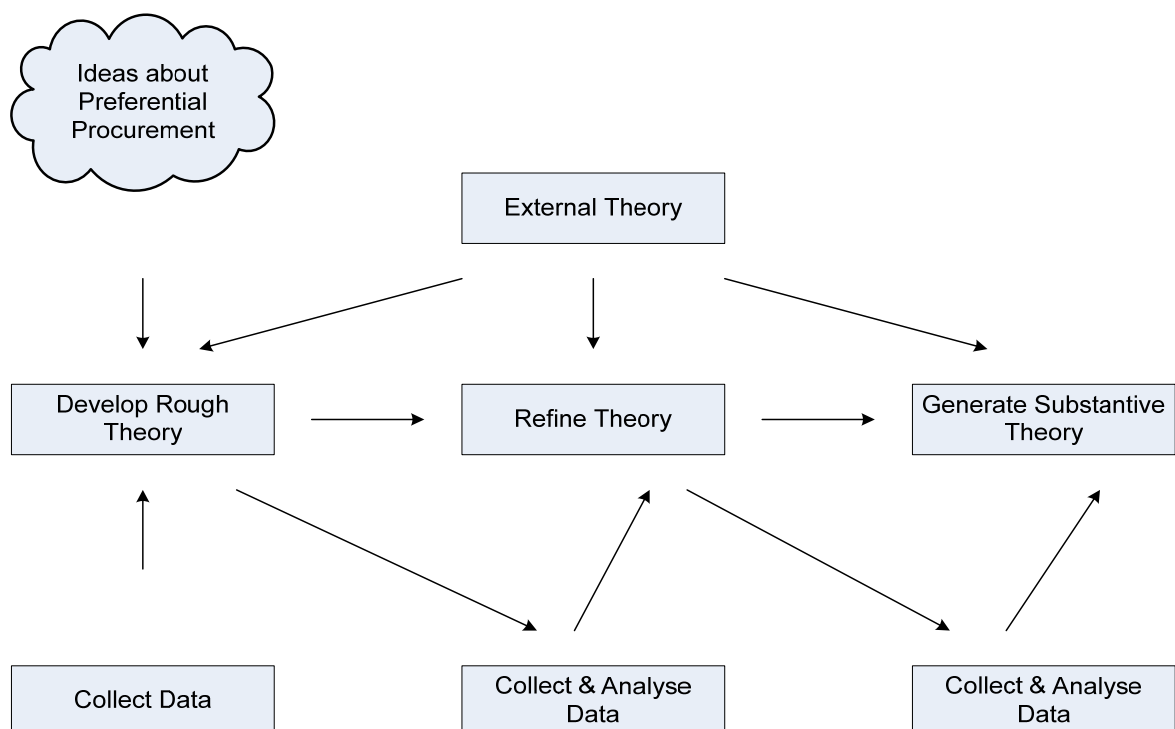


Figure 7.1 Iterative Theory Generation Process

In generating the theory, the analysis focussed on the *business and strategic re-alignment* of construction firms as the core category. This theme subsumed all the other categories

generated during open and axial coding reflected by the 11 phenomena highlighted above. The research put forward three propositions which could be tested in later research or compared with existing theory. A comparison with existing theory in this study was implicit as the theory was built from the perspective of the triadic analytical framework developed in Chapter 3.

Preferential procurement has introduced changes in the construction industry leading to a power-role shift in relations along gender and racial lines. Overall, a key finding was that firms were re-aligning their strategies and infrastructure to take advantage of incentives and disincentives provided by preferential procurement policies.

The different strategies employed by firms were aimed at maximising the firm's opportunities and chances of getting more government contracts relative to competitors. The substantive theory generated reflected the interactions and processes by which firms attempt to either maintain or disrupt the *status quo* to ensure that as many of the benefits as possible accrued to them. As part of the theory development, three propositions were put forward namely:

- i *Preferential procurement policy systems have inherent perverse incentives which militate against the achievement of socio-economic objectives.*
- ii *Construction firms that have more resources and greater organisational capacity are better able to adjust to changes in preferential procurement policies than those with less; and*
- iii *Preferential procurement policies have distributive consequences which affect some firms more adversely than others.*

The substantive theory generated also highlighted a paradox, which is, the power of government to influence behaviours and the limitation of government power and even pro-active laws in effecting social change or behaviour. Acquiescence is not a given as some firms sometimes may engage in manipulative or opportunistic behaviour to re-define or shape the social influence that impact on them.

7.7 OVERALL CONCLUSIONS: IMPLICATIONS

The principal conclusions drawn from this study are provided in this section with the aim of demonstrating the implications of the research findings for government policy. The findings suggested that public procurement has potential to be used as a vehicle for pursuing socio-economic objectives. It was established that the outcomes of firms' responses to preferential procurement policies reflect, to a large extent that government's policy objectives are being achieved in some cases. It confirmed that the construction industry

holds great potential as a vehicle through which government can achieve some of its socio-economic objectives. However, it is concluded that there are inherent perverse incentives in the preferential procurement policy systems that hinder the full realisation of this potential as has been shown throughout this research.

On the positive side, the strategy of unbundling contracts into smaller packages through government preferential procurement policies creates many business and employment opportunities which would not otherwise have arisen through the traditional route. At the workforce level, there are jobs being created for tradesmen and operatives. At a higher level, there is an increasing number of women and black people in ownership and management positions. This is taking place in both existing and new firms. The implication of this is that there is supposedly an increasing number of economically active women and black people in the construction industry as government intends.

Moreover, business opportunities are also being created through subcontracting and material supplying arrangements. As a result, small firms have the potential to grow and develop because of the increased access to work opportunities. This suggests increasing supplier diversity in the industry and development of business linkages between historically empowered and historically disadvantaged small firms that probably would not have developed in the absence of preferential procurement policies. To some extent, the industry is able to generate new industry capacity and address the problem of skewed ownership and participation profile in the process. It is concluded that all these developments indicate that government policy intentions are good and the objectives are being achieved in many respects.

However, on the negative side, as the findings of the research have demonstrated, equitable wealth redistribution is still not being fully realised. To elaborate; the unbundling of contracts into smaller packages attracts numerous small firms, mostly from previously disadvantaged backgrounds. These firms may sometimes not be as efficient as big firms or other non-BEE companies and this has serious implications for industry development and policy. For example, the entry of contractors in the industry without requisite skills leads to the compromise of the quality of products delivered. Despite having little skills, it emerged that some contractors, particularly from historically disadvantaged backgrounds, do not hire qualified site agents or foremen to oversee the work but opt to do the work themselves. This often leads to problems of poor management, non-performance or incomplete performance of contracts which impacts negatively on the industry's ability to deliver. In such circumstances, clients have at times consequently cancelled contracts and then re-tender them. This has cost implications for the clients, contractors and the industry as a whole as well as impacts on serviced delivery. It also tends to reinforce market distortions.

In addition, the unbundling of contracts implies increased risks, costs and contract management problems for clients.

Further, the unbundling of contracts also implies a decreased cost of entry at the lower CIDB grades. As shown earlier, most of the historically disadvantaged enterprises are found in the lower grades because they lack the experience and finances. This suggests that most historically disadvantaged enterprises may not be getting big contracts and this has implications for industry development. As the majority of (new) firms are registered in 1GB and 2BG, the competition is inevitably stiffer at those lower levels. Most of the firms in these grades do not get contracts for long periods of time and thus fail to sustain their businesses. This implies that there are not enough contracts coming from the government to 'go round' and sustain the firms. Paradoxically, at the same time, some firms, including small ones are at times awarded multiple contracts. This is disturbing because awarding multiple contracts to a single firm, particularly where small firms pose a great risk for clients given the financial and skills constraints highlighted earlier.

According to the results of this research, there is an emergence of construction firms that are over-reliant on public work. Most of these firms located at the lower entry levels show very little innovation. Many do not even want to get involved with work in the private sector. The main reason given is that chances of getting contracts in the private are slim as the private sector is very 'selective' both because of the historical background but also efficiency demands. Consequently, there seems to be a pattern of increasing numbers of unsustainable business enterprises at these lower levels.

Moreover, the emergence of thousands of firms as a response to preferential procurement policies reinforces the 'normal' structure of the construction industry i.e. few large firms at the top with many small ones at the bottom of the pyramid. This finding signifies that government preferential policies may be shifting or creating 'new' skewed industry participation profiles. Whereas previously there were very few blacks and women in the industry, currently the number has increased, except the majority are at the bottom where most are unlikely to take full advantage of the opportunities provided. Because of this, it is suggested that in the process, contractors registered in higher grades and some non-target groups with the skills and experience may be benefiting more from the policies than the targeted groups in lower grades.

As the outcomes of the study suggest, skills transfer is usually minimal, particularly where relationships are perceived as 'forced' or 'imposed upon' and generation of new industry capacity is equally limited. In addition, the employment opportunities being created are mostly short-term because of the project-based nature of construction work. Particularly for

firms that are over-reliant on public sector work, their potential to create employment is severely constrained by inconsistent workflow. The study concludes that the 'economic cake' is too small for the number of competitors wanting a share. Consequently, there is an excessively high turnover rate of enterprise formation and dissolution at the lower levels in the industry, an issue of sustainability that has been identified by the CIDB (2007) as a concern for South Africa.

Finally, as preferential procurement policies provide an institutional framework to structure interactions, they consequently limit the choice sets of the actors (North, 2005), leading to tensions and conflicts. In this study, the experiences of preferential procurement policies were different among the participating contractors. Some of them, particularly blacks and women perceived preferential procurement as creating opportunities for them. For others, particularly whites and black men in relation to women preferential procurement was perceived as reducing their opportunities. This is because the women and blacks respectively were seen as added competition for limited contracts and as threats to the traditionally white and male dominated industry. As a medium, preferential procurement was perceived by some (whites and black men) as threatening the structures which had historically reinforced their relative power and dominance within the industry.

The combined result of these factors plus other constraints such as lack of skills and finance by historically disempowered firms was that new firms emerged and existing ones re-aligned themselves so as to take advantage of the opportunities created by the constraints in a cyclic manner. These reflected underlying power struggles and socio-economic adjustments aimed at either creating new or maintaining social orders by the actors to ensure maximum benefits accrued to them as opposed to their competitors.

There was some evidence to suggest that behaviour adjustment by some firms was taking place in the industry at both micro and macro levels. These included low level tendering (price)-based; medium level project-based and high level organisational-based strategies. At the organisational level, both historically empowered and disadvantaged enterprises were transforming to some extent to become more BEE compliant. However, the outcomes also suggest that there were various opportunistic behaviours taking place among contractors in the process. Those behaviours particularly related to avoidance of BEE requirements included the practices of fronting, switching and conducting (conduits). These served to disguise non-conformity to tendering requirements, thereby undermining government's economic empowerment objectives.

Therefore, the study maintains that preferential procurement policies generate both intended and unintended consequences and the effects are not neutral as they give rise to

positive and negative outcomes. The research sees preferential procurement policies merely as institutions that constantly redefine the actors and modes of operation in public procurement rather than completely eliminating conflict in the construction industry.

7.8 CONTRIBUTION TO KNOWLEDGE

The research contributes to the body of knowledge of public procurement as an instrument of socio-economic policy. Little research had been directed at understanding how changes in public procurement through preferential policies influence construction firms' behaviours in terms of their strategies actions and practices in RSA. Establishing an enhanced understanding of this phenomenon is crucial because the resulting dynamics have implications for both industry development and government's socio-economic objectives. In this regard, the research provides new insights through the following:

- i Evolving from the data, the research has generated a detailed understanding of the various strategies and tactics employed by construction firms in response to preferential procurement policies.
- ii The research has extended the understanding of the relationships between construction firms' responses to preferential procurement policies, their consequences and implications for industry.
- iii The research has shown how firms often interact strategically and opportunistically in order to exploit the benefits in social or contractual arrangements thereby disrupting or maintaining the *status quo*.
- iv The research has shown that *ad hoc* development of practice in the industry can be understood as resulting from a combination of factors:
 - a) preferential procurement being a contested concept driven by sometimes incompatible moral and economic assumptions;
 - b) changes in government legislation being incremental and sometimes incompatible, and;
 - c) firms responding through incremental and emergent strategic development routes.
- v The research has established that changes in government preferential procurement policies create new tensions and conflicts rather than completely eliminate them. This results in continuous redefining of participants and modes of operation.
- vi The research has demonstrated that changing the behaviour of industry participants through government policy creates opportunities for opportunistic behaviours which

undermine government policy objectives. In other words, preferential procurement policies as applied in the construction industry have inherent perverse incentives.

- vii The study has established that the effects of preferential procurement policies are not neutral; the policies yield positive and negative outcomes and intended and unintended consequences.
- viii The research has established that power-role relations are changing slowly in the industry along gender and racial lines albeit power and information remaining largely unequally held along the same lines.
- ix The study has shown the difficulty of attempting to change industry behaviour because of different incentives and motivations of various participants.

Additionally, the novelty of this research lies in the following:

- a) It has shown that that a grounded theory approach can enhance our understanding of the impact of government preferential procurement policies on the construction industry.
- b) It has used an interdisciplinary approach utilising a triadic analytical framework comprising institutional incentives, conflict theory and strategy perspectives to achieve the research objectives.

The knowledge generated in this research enriches the broad theory on the use of public procurement as an instrument of socio-economic policy in the RSA. The research findings have contributed to the understanding of how the dual role of government as a regulator and client to the construction industry influences the industry practice. The following recommendations have been made as stated below.

7.9 RECOMMENDATIONS

7.9.1 Recommendations for Public Sector Client bodies

- i Contracts should be packaged in appropriate packages that should be structured to attract higher graded contractors to tender in order to reduce the risk for clients.
- ii Public sector clients should improve their payment systems to avoid the delays which currently impact negatively on the contractors, particularly the emerging small ones.
- iii Client bodies should improve their regulatory/project supervision and monitoring mechanisms in order to enhance the achievement of both the physical and social deliverables.

- iv Clients should develop business models or performance measurement indicators to assess the extent to which the socio-economic objectives are being achieved through preferential procurement. This would help in identifying areas in the policy or its implementation where incremental adjustments can be made to improve the effectiveness.

7.9.2 Recommendations for Government

- i Government should consider extending preferential policies to the issuing of building permits to increase coverage of BEE and expand the beneficiary base.

7.9.3 Recommendations for the CIDB

- i The CIDB contractor monitoring system should be improved so as to show when a contractor's capacity has reached its limit to avoid for example, allocating multiple contracts to small contractors.
- ii The current system of training emerging contractors should be improved and minimum training or qualification for contractors across all grades be made compulsory as part of contractor registration requirement. This could contribute to ensuring that all contractors have the basic management skills required to operate an enterprise and complete a contract.
- iii CIDB registration should also be made mandatory for all contractors including sub-contractors wishing to participate on any public sector project given to a main contractor. Currently, provided the main contractor is registered, a sub-contractor is not required to be CIDB registered. This could contribute to increased formalisation of subcontracting and minimisation of opportunistic behaviours amongst contractors.

7.9.4 Recommendations for Construction Firms

- i Firms, particularly upcoming ones, should invest more in building up their companies in terms of acquiring assets and skills. This could assist to alleviate the current common practice where some contractors 'live from one certificate to the next', which makes them stay at the lower CIDB grades where they can only tender for small contracts.

The areas which emerged as potentially significant yet were outside the scope of the study are suggested below as areas for further research.

7.10 AREAS FOR FURTHER RESEARCH

- i Develop extensive quantitative work on the research findings that can test their statistical significance within a geographical area.
- ii Investigate whether the research findings apply to material suppliers, component manufacturers and professional service providers in the construction industry.
- iii Examine more effective ways of reducing opportunistic behaviours arising from preferential procurement in order to achieve greater economic empowerment.
- iv Assess the effectiveness of the transformation charter and BEE codes of good practice in delivering economic empowerment goals in the construction industry.

7.11 A CRITICAL REFLECTION OF THE RESEARCH PROCESS

In every research, “we need to be critical of our own theoretical biasness and assumptions” (Kwan and Tsan, 2001:1167) in the attempt to contribute to knowledge creation. Indeed, there were some limitations to this research. For example, not all areas relating to factors affecting implementation of preferential procurement policies and strategies adopted by construction firms could be explored. This was because, in some cases, access to potential respondents in the firms that were contacted could not be obtained.

Moreover, as the aim was not to achieve statistical representation, the research used theoretical sampling, a typical purposive sampling method. Thus, the sampling strategy has been noted as reducing the generalisability of the research findings due its non-randomness. The researcher’s role as a ‘non-neutral’ observer has also been noted. Therefore, in their current state, the research findings are only hypotheses because of the chosen methodology. However, ‘good’ research or “theory must be clear about its assumptions, rigorous about its methodologies and circumspect about the generalisability of its findings” (Mir and Watson, 2001:1173).

Research is a learning process “with existing problems constantly being solved or better understood whilst simultaneously new challenges are forever being identified” (Holt, 1998:3). Thus, with hindsight, the research might have benefited more from a 2-tier structure, with the first stage developing theory and the second testing it using a wider sample and statistical analysis. Nonetheless, these limitations do not detract from the essential learning processes or detrimentally affect the research output. In its defence, the research methodology adopted with its built-in validation mechanism was appropriate and allowed the research to sufficiently generate findings that have made a valuable contribution to knowledge as elaborated in 7.7. Moreover, the stated aim of the research was to contribute to theory development and not to test it and the respondents accessed

through theoretical sampling were knowledgeable about the changing industry policies and practices.

Reliability of the study in the positivistic sense of replicability does not apply in an interpretive study. Rather, the work should be judged on different parameters appropriate to research adopting an emergent research design to enables the refinement of research issues as the research progresses. This allowed questions that had not originally been thought of to be raised and answered as the research setting got understood better, demonstrating dependability (Remenyi *et al*, 1998). A static design would not have provided this opportunity. In addition, the research followed good practice guidelines such as establishing an 'audit trail' and storing the evidence collected properly so that other people can access it should the need arise.

Therefore, while caution should be exercised, the findings are credible enough as they derived from an in-depth description of the complexities of the research and the empirical evidence discussed. They are also supported by the qualitative research argument that provided a phenomenon is observed in a specified way or context, it is indicative that it occurs or can happen (Mason, 1996). Therefore, the findings that emerged from this research give an indication of the strategic actions and practices of construction firms in response to preferential policies and it is suspected that these are wide-spread in the industry. Rather than objectivity, the results of this research confirm general findings and it's highly probable that they could be confirmed by a similar study.

Moreover, theoretical sampling was a justifiable position to take given that it was consistent with the philosophical underpinnings, the nature of the research problem, the aims and the methodology. Data collection stopped at a point when additional data did not seem to add any further value. However, the research was constrained by the bulky textual data generated which made it difficult and tedious to transcribe and analyse compared to when a questionnaire is used. Nevertheless, the richness of the data illuminated greater insights into how different actors in the preferential procurement systems make meaning of their situations, interact and respond to a changing public procurement environment in the RSA construction industry.

In conclusion, the research findings shed light on the processes and issues which are central to the some wider body of knowledge on public procurement as an instrument of social policy. The type of theory the research contributes is interpretive understanding as opposed to universal laws. This thesis reflects the researcher's best articulation of their current understanding of the phenomenon under investigation. As a result, while

‘something of value’ has been added to knowledge through the theoretical explanations provided in this research, its findings and conclusions remain tentative.

8.0 REFERENCES

- Abdullah, F. H. (1997) Affirmative action policy in Malaysia: to Restructure Society, to Eradicate Poverty. Available online http://www.iceslk/publications/esrarticle_jul97/Esr-Abdullah.pdf, Accessed 07 August 2007.
- Adele, T. (1996) *Beyond Affirmative Action*, Randburg, Knowledge Resources.
- Ahwireng-Obeng, F. (2001) Contributors to Successful Large and Small Business Linkaging in South Africa, in *Proceedings of ICSB World Conference*, 17-10 June, Taipei, Taiwan, Available online: <http://www.sbaer.uca.edu/Research/2001/ICSB/E-2-3.pdf>, Accessed 20 July 2007.
- Akech, M. J. M. (2006) Development Partners and Governance of Public Procurement in Kenya: Enhancing Democracy in the Administration of Aid, IILJ Working Paper 2006/3, Global Administrative Law Series, New York University School of Law, New York.
- Akintoye, A., Hardcastle, C. and Chinyio, E. (2004) Application of Game Theory in Public Private Partnership, in *Project Procurement for Infrastructure Construction* (eds.) Kalidindi S and Varghese, K, Narosa Publishing house, New Dehli, 1 - 14.
- Alexander, A. L. and Schwarzschild, M. (2004) Grutter or Otherwise: Racial Preferences and Higher Education. *Public Interest Law* **9**, 1-14.
- Alexander, M. (2007) Black Economic Empowerment Available online <http://www.allafrica.com/stories/printable/200703231220.html>, Accessed 08 July 2007.
- Amaratunga, D., Baldry, D., Sarshar, M. and Newton, R. (2002) Quantitative and Qualitative Research in the Built Environment: Application of "Mixed" Research Approach. *Work Study*, **51** (1), 17-31.
- ANC (1994) *The Reconstruction and Development Programme: a Policy Framework*, Johannesburg, Umunyamo Publications.
- Andrew, J. (1990) Building Strategy: How to Win, Structure and Manage Projects. *First ASEAN International Symposium on construction and development*, Kuala Lumpur, Malaysia, 7-8 May.
- Andrew, K. (1971) *The Concept of Corporate Strategy*, Homewood IL, Irwin.
- Ansoff, H. (1965) *Corporate Strategy: An analytic Approach to Business Policy for Growth and Expansion*, New York, McGraw-Hill.

- Ansoff, H. (1984) *Implanting Strategic Management*, Englewood Cliffs, N. J, Prentice Hall International.
- Anvuur, A., Kumaraswamy, M. and Male, S. (2006) Taking Forward Public Procurement Reforms in Ghana, *in proceedings of the CIB W107 Construction Developing Economies International Symposium, Construction in Developing Economics: New Issues and Challenges*, 18 – 20 January, Santiago, CD ROM 9 Pages.
- Arrowsmith, S. (1995) Public Procurement as an Instrument of Policy and the Impact of Market Liberalisation. *The Law Quarterly Review*, (April), 235-284.
- Atlee, J. S. and Atlee, T. (1992) *Democracy: A Social Power Analysis*. [http://Think Peace SocPwrAnal.html](http://ThinkPeaceSocPwrAnal.html), Accessed 05 February 2007.
- Aveng (2005) *Black Economic Empowerment in Aveng Limited*, available online <http://www.aveng.co.za>, Accessed 14 September 2007.
- Aziz, A. and Ofori, G. (1996) Developing World Beating Contractors through Procurement Policies: The Case of Malaysia, *in proceedings of CIB W92 proceedings- North meets South*, 1-10, Durban.
- Babbie, E. (1995) *The Practice of Social Research*, Seventh Edition, Belmont, ITP Wadsworth Publishing Company.
- Babbie, E. and Mouton, J. (2001) In *the Practice of Social Research*, South African Edition, 489-516, Cape Town, Oxford University Press.
- Bajari, P. and Tadelis, S. (2001) Incentives Versus Transaction Costs: A Theory of Procurement Contracts. *The Rand Journal of Economics*, **32** (3), 387-407.
- Baldrige, J. V. (1975) *A Critical Approach To Power, Conflict And Change*, New York, Willey.
- Ball, M. (1988) *Rebuilding Construction: Economic Change and the British Construction Industry*, London, Routledge.
- Barney, J. B. and Hesterly, W. S. (2006) *Strategies, Management and Competitive Advantage Concepts*, Upper Saddle River, Pearson Prentice Hall.
- Bassis, M. S., Gelles, R. J. and Levine, A. (1991) *Sociology: an Introduction*, New York, McGraw-Hill.
- Bates, T. (2001) Minority Business Access to Mainstream Markets. *Journal of Urban Affairs*, **23** (1) 41-56.
- Bates, T. and Williams, D. (1995) Preferential Procurement Programmes and Minority-

- Owned Businesses. *Journal of Urban Affairs*, **17** (1) 1-17.
- Bates, T. and Williams, D. (1996) Do preferential Procurement Programs Benefit Minority Business? *The American Economic Review*, **86** (2) 294-297.
- Bates, T. and Williams, D. (1993) Racial Politics: Does it pay? *Social Science Quarterly*, **74**, 507.
- Batts, V. (2002), Is Reconciliation Possible? Lessons from Combating "Modern Racism" in Douglas, I. T (Ed.). *Waging Reconciliation: God's Mission in a Time of Globalisation, in Crisis*, Church Publishing. Available online <http://www.churchpublishing.org>, Accessed 06 July 2006.
- Bayat, A., Bayat, M. and Molla, Z. (2004) Municipal Procurement and the Poor: A Case Study of Three Municipalities in the Western Cape Province, Available online:<http://www.competition-regulation.org.uk/conferences/Southafrica04/BayaytMoola.doc>, Accessed 12 September 2007.
- BEECOM (2001) *Black Economic Report*, Johannesburg, Skotaville.
- Besanko, D., Dranove, D. and Shanley, M. (2000) *Economics of Strategy, Second Edition*, New York, Chichester, Weinheim, Brisbane, Singapore, Toronto, John Wiley & Sons Inc.
- Betts, M. and Ofori, G. (1992) Strategic Planning for Competitive Advantage in Construction. *Construction Management and Economics*, **10**, 511 – 532.
- Bhorat, H., Leibbrandt, M., Maziya, M., van der Berg, S. and Woolard, I. (2000) Labour Markets and the challenge of Poverty and Inequality in South Africa, DPRU/GTZ.
- BIFSA (2003) Proposal Penalties for Fronting. *Builder*, (No. 954) 4.
- Blaikie, N. (1993) *Approaches to Social Enquiry*, Polity Press, Cambridge.
- Blumkin, T., Margalioth, Y. and Sadka, E. (2005) *Affirmative Action and Economic Justice*, Discussion paper No. 05-20, Monaster Centre for Economic Research, Ben-Gurion University of the Negev, Beer Sheva.
- Boston, T. D. (1999) *Affirmative Action and Black Entrepreneurship*, London, Routledge.
- Brandeburger, A. and Nalebuff, B. (1996) *Co-ompetition*, New York, Doubleday.
- Briscoe, G. (1989) *The Economics of the Construction Industry*, London, Mitchell.
- Bronowski, J. (1956) *The Common Sense of Science*, London, Pelican.
- Broome, J. (2002) *Procurement Routes and Partnering*, London, Thomas Telford.

- Brown, L. (2004) Speech by Provincial Minister of Finance and Tourism at a Procurement conference, Available online
<http://capegateway.gov.za/eng/pubs/speeches/2004/Jun/html>, Accessed 21 April 2006.
- Browne, K. (2005) *An Introduction to Sociology*, Cambridge, Polity Press.
- Bryman, A. and Bell, E. (2003) *Business Research Methods*, Oxford, Oxford University Press.
- Business Day (2006) BEE 'Vital' for Winning New Business, *Business Day*, 20th May, 2006, available online <http://www.sabusinesshub.com/section/contentphp?sectionid=23&subsectionid=12>, Accessed 23 February 2007.
- Butler, A. (2006a) New Agenda, *Business Day*, 12 June, 2006, Cape Town.
- Butler, A. (2006b) Turning an Ear to BEE Alarm Bells, *Business Day*, 12 June, 2006, Available online: <http://www.businessday.co.za/articles> .
- Butler, A. (2006c) Black Economic Empowerment, Available online
www.yale.edu/macmillan/aparthied/butler.pdf, Accessed 25 February 2007.
- Cain, C. T. (2003) *Building Down Barriers: A Guide to Construction Best Practice*, London, Spon Press.
- Campbell, D. E. (2006) *Incentives: Motivation and the Economics of Information, Second Edition*, Cambridge, Cambridge University.
- Caplow, T. (1994) *Perverse Incentives: the Neglect of Social Technology in Public Sector*, Westport, Connecticut, London, Praeger.
- Carter L. S (1991) *Reflections of an Affirmative Action Baby*, New York, Basic Book.
- Cartledge, D. (2002) *New Aspects of Quantity Surveying Practice*, Oxford: Butterworth, Heinemann.
- Cavana, R. Y., Delahaye, L. B. and Sekaran, V. (2001) *Applied Business research: Qualitative and Quantitative Methods*, Sydney, Melbourne, John Willey & Sons Australia Ltd.
- Chandler, A. D. (1962) *Strategy and Structure: Chapters in the history of the industrial enterprise*, Cambridge, Mass, MIT Press.
- Channon, D. F. (1978) *The Service Industries: Strategy, Structure, and Financial Performance*, London, Macmillan.
- Charlton G. D and Van Niekerk, N. (1994) *Affirming Action Beyond 1994: Laying the*

Foundation for Comprehensive and Effective Affirmative Action into the 21st Century, Cape Town, Juta and Co. Ltd.

- Charmaz, K. (1994) Discovering Chronic Illness: Using Grounded Theory, in Glaser, B. G. E. (Ed.), *More Grounded Theory Methodology: A Reader*, 65-94., Mill Valley, Sociology Press.
- Chay K, Y. and Farlie, R., W. (1998) Minority Business Set-Asides and Black Self Employment, Available online <http://econo.ucsc.edu/~fairlie/papers/Setaside.pdf>, Accessed 12 April 2007.
- Cheetham, T. and Mabuntana, L. (2006) Developmental Initiative towards Accelerated and Shared Growth Initiative of South Africa (ASGISA), DPW, Pretoria.
- Cheng, D. (2006) Malaysia: Government Procurement, Available online [http://commercecan.ic.gc.ca/scdt/bizmap/interface2.nsf/vDownload/ISA_5263/\\$file/X_1131438.DOC](http://commercecan.ic.gc.ca/scdt/bizmap/interface2.nsf/vDownload/ISA_5263/$file/X_1131438.DOC), Accessed 12 April 2007.
- Chia, R. (2002) The Production Of Management Knowledge: Philosophical Underpinnings of Research Design, In Partington, D. (Ed.), *Essential Skills for Management Research*, 1-20., London, Sage.
- Chinnock, J. and Collins, C. (1999) Purchasing Power: Aid Untying, Targeted Procurement And Poverty Reduction, ActionAid, London.
- CIDB (2007), Construction Industry Development Board, Available online <http://www.cidb.org.za>, Accessed 14 February 2007
- CIDB (2004) SA Construction Industry Status Report – 2004: Synthesis Review on the South African Construction Industry and its Development, discussion document, CIDB, Johannesburg.
- CIDB (2006) In Focus, Newsletter of the Construction Industry Development Board, March., CIDB, Johannesburg.
- CIDB, DPW and CETA (2005) Towards Sustainable Contractor Development 2005. National Workshop: Towards a Common Framework for Enterprise Growth and Sustainability, CIDB, Johannesburg, South Africa,
- Clarke, A. M. (1998) The Qualitative-Quantitative Debate: Moving From Positivism and Confrontation to Post-Positivism and Reconciliation. *Journal of Advanced Nursing*, **27** (6), 1242-1249.
- CMC (Cape Metropolitan Council) (2000) Metropolitan Council Helps Small Business Make it Happen, Available online <http://www.cmc.gov.za/esd/coreinfo/recentpub.html>.

Accessed 11 August 2006.

- Coate, S. and Loury, G. C. (1993) Will Affirmative Action Eliminate Negative Stereotypes? *The American Economic Review*, **83** (5), 1220-1240.
- Coffey, A. and Atkinson, P. (1996) *Making Sense of Qualitative Data: Complimentary Research*, Thousand Oaks, London, New Delhi, Sage Publication.
- Collins, S. D. (2005) *Managing Conflict And Work Place*, Managerial Communication Series, Mason, Thomson.
- Conlin, J. T., Langford, D. A. and Kennedy, P. (1996) The Relationship Between Construction Procurement Strategies and Construction Disputes, in *proceedings of the CIB W 92 North meets South*, January 2006, Durban. South Africa, 66-82.
- Cook, D. (1999) The Role Of Government, Market Failure, Seminar Notes for Fellows, Centre for Policy Excellence/Budget Policy Workshops 8 & 9, Available online http://www.icps.com.ua/doc/w8&9_eng.doc, Accessed 29 November 2006.
- Cook, M. (2006) Powers and Policies for including Social Requirements in Public procurement in England and Wales (supplementary paper), in *proceedings of CIBW92 Procurement Systems Conference*, 29th November - 2nd December 2006, Salford Quays; Manchester.
- Cooke, A. (1996) *Economics and Construction*, London, Macmillan.
- Corvette, B. B. A. (2007) *Conflict Management: a Practical Guide to Developing Negotiating Strategies*, Upper Saddle, Pearson Prentice Hall.
- Creamer, T. (2005) Sun Is Shining on the Construction Economy, *Engineering News*, April **25**, 13, Johannesburg, Creamer Media.
- Cresswell, J. W. (1998) *Qualitative Inquiry and Research Design: Choosing among Five Traditions*, Thousand Oaks, London and New Delhi, Sage publications.
- Cronje, G. J., Du Toit, G. S., Marais, A. and Motlatla, M. D. C. (2004) *Introduction to Business, Management, Sixth Edition*, Cape Town, Oxford Southern Africa.
- Crosby, F. J. and Clayton S (2004) Affirmative Action and the Search for Educational Equity. *Analyses of Social Issues and Public Policy*, **4** (1) 243-249.
- Crosby, F. J., Iyer, A., Clayton, S. and Downing, R. A. (2003) Affirmative action: Psychological Data and the Policy Debates. *American Psychologists*, **58** (2), 93-115.
- Crosby, F. J., Iyer, A. and Sincharoen, S. (2006) Understanding Affirmative Action. *Annual*

- Review of Psychology*, **57**, 585-612.
- Crosby, F. J. and Clayton, S. (2001) Affirmative action: Psychological Contributions, *Analyses of Social Issues and Public Policy*, 71-87.
- Crossan, F. (2003) *Research Philosophy: Towards an Understanding*. *Nurse Researcher*, **11** (1), 46-55.
- Crotty, M. (1998) *The Foundations of Social Research: Meaning and Perspective in the Research Process*, London, Sage publications.
- CSIR (2003) A Review of the South African Construction Industry, CSIR (Boutek), Pretoria.
- Dahaban, D. S. H. (2004) Malaysia: 30 years of Poverty Reduction, Growth and Racial Harmony. *A Global Learning Process and Conference on a Case Study from Reducing Poverty, Sustaining Growth - What Works, What Does Not and Why – A Global Exchange for Scaling Up Success, Scaling Down Poverty*, May 25 – 27 2004, Shanghai China.
- Dainty, A. R. J., Bagilhole, B. M. and H, N. R. (2000) A Grounded Theory of Women's Career Under-Achievement In Large U.K. Construction Companies. *Construction Management and Economics*, **18**, 239-250.
- Dansoh, A. (2005) Strategic Planning Practice of Construction Firms in Ghana. *Construction Management and Economics*, **23** (2), 163 - 168.
- Davis, S. (2006) SA Construction Industry will have to Double Output to Meet Demand, Available online: <http://www.engineeringnews.co.za/components/print.asp?id=97171>, Accessed 12 March 2007.
- De, A. and Samarasinghe, S. W. R. (1993) Sri Lanka: Affirmative Action and Equity in a Multi-Ethnic Society, 6 September 1993, development and policy unit foundation.
- De Wet, J. and Erasmus, Z. (2005) Towards Rigour in Qualitative Analysis. *Qualitative Research Journal*, **5** (1), 227-240.
- Dekker, C. (2004) *The way To BEE: A Guide to Broad-Based Black Economic Empowerment in South Africa*, Available online: www.cliffedekker.com/literature/bee/index, Accessed 28 April 2006.
- Denzin, N. K. and Lincoln, Y. S. (1994) *Handbook of Qualitative Research*, Thousand Oaks, Sage.
- DETR (2000) Building a Better Quality of Life: A Strategy for more Sustainable Construction, *Department of Environment, Transport and the Regions*, London.

- Dey, I. (1993) *Qualitative Data Analysis: A User-friendly Guide for Social Scientists*, London, Routledge.
- DiMaggio, P. J. and Powell, W. W. (1983) The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields. *American Sociological Review*, **48**, 147 - 60.
- DTI (2006a), ASGISA, Department of Trade and Industry available online at <http://www.info.gov.za/asgisa/>; accessed 12th March 2007.
- DTI (2006b), ASGISA 2006 Annual Report; Department of Trade and Industry, Available online at <http://www.info.gov.za/asgisa>, accessed 12th March 2007.
- DTI (2003), Black Economic Empowerment Strategy, Department of Trade and Industry, Government Gazette. No. 29616, Pretoria.
- Easterby-Smith, M., Thorpe, R. and Lowe, A. (1991) *Management Research: An Introduction, First Edition*, London, Sage Publications.
- Easterby-Smith, M., Thorpe, R. and Lowe, A. (2002) *Management Research: An Introduction, Second Edition*, London, Sage Publications.
- Edigheji, O. E. (1999) Rethinking Black Economic Empowerment in The Post Apartheid South Africa. TIPS 1999 Annual Forum, 19 - 22 September, Glenburn Lodge, Muldersdrift.
- Edwards, J. (1995) *When Race Counts*, London, Routledge.
- Eide, A. U. (1992) *Equality and Affirmative Action: Affirmative Action in a new South Africa*, Cape Town.
- Empowerdex (2006) An Empowerdex Guide: Broad-Based Black Economic Empowerment – A New Way of Growing Business in South Africa Available online at <http://www.empowerdex.com>, Accessed 07 March 2007.
- Emsley, I. (1996) *The Malaysian Experience of Affirmative Action: Lessons for South Africa*, Cape Town, Human & Rousseau.
- Engdahl, C. and Hauki, H. (2001) Black Economic Empowerment: an Introduction or Non-South African Businesses, Unpublished Masters thesis, Göteborg University, Department of Law, Sweden.
- EPWP (2003) Available online: <http://www.epwp.gov.za/>, Accessed 12 March 2007
- EPWP (2006) Fourth Quarterly Report Year 2 (for period 1 April, 2005 to 31 March, 2006), Available online: <http://www.epwp.gov.za/> Accessed 3 April 2007.

- ERF (2004) Government Intervention in Markets: An introduction, Available online: [http://www.tutor2u.net/economics/revisiofocus_2004/AS Government Intervention_in_Markets.pdf](http://www.tutor2u.net/economics/revisiofocus_2004/AS%20Government%20Intervention_in_Markets.pdf), Accessed 07 March 2007.
- Esman, M. (1987) Ethnic Politics and Economic Power. *Comparative Politics*, **19** (4), 395 - 418.
- Evenett, S. J. and Hoekman, B. M. (2005) *International Cooperation and the Reform of Public Procurement Policies*, World Bank and CEPR, Washington DC.
- Fee, R., Erridge, A. and Hennigan, S. (2002) SMEs and government purchasing in Northern Ireland: problems and opportunities. *European Business Review*, **12** (5), 326 – 334.
- Fellows, R., Langford, D., Newcombe, R. and Urry, S. (2002) *Construction Management in Practice*, Oxford, Blackwell Science.
- Fellows, R. F. and Liu, A. (1997) *Research Methods for Construction, First Edition*, Oxford, Blackwell Science.
- Fellows, R. F. and Liu, A. (2003) *Research Methods for Construction, Second Edition*, Oxford, Blackwell Science.
- Fenn, P., Lowe, D. and Speck, C. (1997) Conflict and Dispute in Construction. *Construction Management and Economics*, **15**, 513 - 518.
- Ferreira, M. (1986) *Incentives and disincentives: An Overview of measures to achieve demographic objectives*, Report S-147, HSRC: Pretoria.
- Fryer, B., Freyer, M., Egbu, C., Ellis, R. and Gorse, C. (2004) *The Practice of Construction Management: Principles and Business Performance Fourth Edition*, Oxford, Malden, Victoria, Blackwell Publishing.
- Fryer Jr. R G, Loury G C and Yuret, T., (2003) Color-Blind Affirmative Action, Working Paper 10103, NBER Working Paper Series, National Bureau of Economic Research, Cambridge.
- Fryer, J. R. G. and Loury, G. C. (2005) Affirmative Action and Its Mythology. *Journal of Economic perspectives*, **19** (3), 147 - 162.
- Gadebe, T. (2006) South Africa: Construction Industry Urged to Play Part for 2010, Available Online: <http://www.allafrica.com/stories/200607261124.html> Accessed 06 April 2007.
- Ganesan, S. (2000) *Employment, Technology and Construction Development*, Aldershot, Ashgate.

- Gardiner, P. D. and Simmons J. E. L. (1995) Case Explorations in Construction Conflict Management. *Construction Management and Economics*, **13** (3), 219 – 234.
- Gardiner, P. D. and Simmons, J. E. L. (1992) Analysis of Conflict and Change In Construction Projects. *Construction Management and Economics*, **10** 459 – 478.
- Gelb, S. (2003) Inequality in South Africa: Nature, Causes and Responses, DfID Policy Initiative on Addressing Inequality in the Middle-income Countries, Available online http://www.sarpn.org.za/documents/d000671/P686Gelb_Inequality_in_SA.pdf, Accessed 06 February 2007.
- Gergen, K. J. (1985) The Social Constructionist Movement in Modern Psychology. *American Psychologist*, **40** (2), 266 - 275.
- Gergis, A. (1999) Citizen Economic Empowerment in Botswana: Concepts and Principles, BIDPA Working paper No. 22, Botswana Institute for Development Policy Analysis, Gaborone.
- Glaser, B. and Strauss, A. (1967) *The Discovery of Grounded Theory: Strategies for Qualitative Research*, New York, Aldine de Gruyter.
- Gorse, C. A. (2003) Conflict and Conflict Management in Construction *in Proceedings of the Nineteenth Annual Conference ARCOM*, 3-5 September, University of Brighton, 173 -182.
- Goulding, C. (1998) Grounded Theory: The Missing Methodology on the Interpretivist Agenda, *Qualitative Market Research: an international Journal*, **1** (1), 50 -57.
- Gounden, S. (2000) The impact of the National Department of Public Works' Affirmative Procurement Policy on the Participation and Growth of Affirmable Business Enterprises in the Construction Sector, Unpublished PhD thesis, University of Natal, Durban.
- Gounden S. M (1998) Public Sector Procurement as an Instrument of Government Policy, *in proceedings of the 9th International public procurement Association Conference*, Copenhagen, Denmark.
- Gounden, S. M. (1997) Transforming Public Sector Construction in South Africa: A Focus on Promoting Small and Medium Construction Enterprises. *In Proceedings of First International Conference on Construction Industry Development*, National University of Singapore, Available online: http://www/targetedprocurement.com/papers/SG/pdf_files/SGSingapore.p, Accessed 12 April 2006.

- Govender J.N and Watermeyer R.B (2001) *Potential Procurement Strategies For Construction Industry Development in The SADC Region*, unpublished paper, Department of Public Works, Pretoria.
- Govender, J. N. and Watermeyer, R. B. (2000) Potential Procurement Strategies for Construction Industry Development in the SADC region. In Proceedings Of The 2nd International Conference on Construction Industry Development, Gaborone, Available online:
www.targetedprocurement.com/papers/RBW/pdf_files/Botswana_2000.pdf,
 Accessed 06 February 2007
- Gray, D. E. (2004) *Doing Research in the Real World*, London, Sage Publications.
- Green, S. D. A. (1997) Participative Research Strategy for Propagating Soft Methodologies in Value Management Practice. *Construction Management and Economics*, **17**, 329-340.
- Greene, J. (1979) Science, Nursing and Nursing Science: A Conceptual Analysis. *Advances in Nursing Science*, **2** (1), 22 - 24.
- Guan, L. H. (2000) Ethnic relations in Peninsular Malaysia: the Cultural and Economic Dimensions, Available Online www.iseas.edu.sg/sc12000.pdf Accessed 07 July 2007.
- Guba, E.G. and Lincoln Y. S. (1990) Can there be a Human Science? Constructivism as an Alternative. *Person-centred Review*, **5** (2), 130 -154.
- Guba E.G and Lincoln Y.S (1998) Competing Paradigms in Qualitative Research, in Lincoln Y. S. and Denzin N.K. (Eds.), *Handbook of Qualitative Research*, 195-221, Thousand Oaks, Sage Publications.
- Guba E.G and Lincoln, Y. S. (1994) Competing Paradigms in Qualitative Research, In Lincoln Y. S. and Denzin N.K. (Eds.), *Handbook of Qualitative Research*, 105-117, Thousand Oaks, Sage publications.
- Guba, E. G. (1990) The Paradigm Dialogue, in Guba, E. G. (Ed.), *The Alternative Paradigm Dialogue*, 17 – 30, London, Sage Publications.
- Guerrero, M. A. J. (1997) Affirmative Action: Race, Class, Gender and NOW (Facing the Future: The Status of Affirmative Action in the 21st Century. *American Behavioral Scientist*, **41** (2), 264 – 256.
- Guterman, J. T. (1991) Letter to the Editor. *Journal of Marital and Family Therapy*, **17**, 415-416.

- Guterman, J. T. (1994) A Social Constructionist Position for Mental Health Counselling. *Journal of Mental Health Counselling*, **16**, 226-244.
- Hachmann, P. (2004) Socio-Technical Aspects of Concurrent Engineering in Construction – A German Perspective, Unpublished PhD Thesis, University of Cape Town.
- Hair, F. J., Babin, B., Money, A. H. and Samoeul, P. (2006) *Essentials of Business Research Methods*, New York, John Wiley & Sons Inc.
- Hall, P. A. and Soskice, D. (2001) *Varieties of Capitalism, the Institutional Foundations of Comparative Advantage*, Oxford, Oxford University.
- Hamel, G. and Prahalad, C. K. (1994) *Competing for the Future*, Boston, Mass, Harvard Business School Press.
- Hamilton, R. (2003) Is Black Economic Empowerment Working?, Available online <http://newsvote.bbc.co.uk/go/pr/fr/-/2/hi/business/3262123.stm>, Accessed 13 June 2007.
- Harland, C., Bakker, E., Caldwell, N., Phillips, W. and Walker, H. (2005) The Changing Role of Public Procurement, Executive Report from the Second Workshop, 17-19 March, Geneva.
- Harriss, C. (1998) Why research without Theory is not Research: A Reply to Seymour, Crook and Rooke. *Construction Management and Economics*, **16**, 113-116.
- Hawkins, J., Herd, C. and Wells, J (2006) Modifying Infrastructure Procurement to Enhance Social Development, London, Engineers Against Poverty and Institute of Civil Engineers.
- Held, B. S. (1990) What's in a Name? Some Confusions and Concerns about Constructivism. *Journal of Marital and Family Therapy*, **16**, 179-186.
- Henderson, J., Hulme, D., Phillips, R. and Nur, N. A. M. (2002) Economic Governance and Poverty in Malaysia, Available online <http://www.gapresearch.org/governance/MalaysiaReportMay2002.pdf>, Accessed 05 May 2007.
- Hicks, S. (2002) Free Speech and Postmodernism, The Objectivist Centre, Washington D. C, Available online <http://www.objectivistcentre.org>, Accessed 01 June 2006.
- Hillebrandt, P. M (2000) *Economic Theory and the Construction Industry, 3rd Edition*, London, Macmillan Press.
- Hillebrandt, P. M and Cannon J (1990) *The Modern Construction firm*, London, Macmillan.
- Hillebrandt, P. M., Cannon, J. and Lansley, P. (1995) *The Construction Company in and*

- out of Recession*, Houndmills, Basingstoke, Hampshire and London, Macmillan Press.
- Hirsch, A. (2005) *Season of Hope: Economic Reform under Mandela and Mbeki*, University of KZN Press/IDRC, Durban.
- Hofmeyr, J. and McLennan, A. (1992) The Challenge Of Equalising Education in R. Schrire (ed.) *Wealth or Poverty? Critical for South Africa*, Cape Town, Oxford University Press.
- Holt, G. (1998) *A Guide to Successful Dissertation Study for Students of the Built Environment*, Second Edition, West Midlands, The Built Environment Research Unit, University of Wolverhampton.
- Hughes, J. (1994) *The Philosophy of Social Research*, Essex, Longman.
- Hughes, W. P. (1997) Construction Management Research: A Field of Application. *Third International Electronic Forum on Research and Education for Construction*, Available online: http://www.arbld.unimelb.edu/-krnley/conf_97/papers/w_hughes_ele_1.html, Accessed 05 June 2006.
- Hussey, J. and Hussey, R. (1997) *Business Research: A Practical Guide for Undergraduate and Postgraduate Students*, Basingstoke, Macmillan Business.
- ICLEI (2002) Local Procurement for Development and Sustainability, Unpublished report, International Council for Local Environment Initiatives, Freiburg.
- Iheduru, O. (2004) Black economic empowerment and nation-building in post apartheid South Africa. *Journal of Modern African Studies*, **42** (1), 1 – 30.
- Innes, D., Kentridge, M. and Perold, H. (1993) *Reversing Discrimination: Affirmative Action in the Workplace*, Cape Town, Oxford University Press.
- IRIN (2004) South Africa: A Special Report on a Decade of Democracy – Black Economic Empowerment, Available Online: <http://www.irinnews.org>, Accessed 14 Sept 2005.
- Jacks, M. (2006) Special Edition Top Empowerment Companies 2006: A call to Embrace Change, *Financial Mail*, March 10,
- Jacoby, T. (1998) *Someone Else's House: America's Unfinished Struggle for Integration*, New York, Free Press.
- Jaret, C. (1997) Inequality and Affirmative Action: Sociological Perspective in Middleton, in Ballard, C. and Gubby, J. (Eds.), *The Students Companion to Sociology*, 194 – 201, London, Blackwell Publishing.

- Jauch, H. (1998) *Affirmative Action in Namibia: Redressing the Imbalance of the Past and New*, Windhoek, Namibia Books (Pty) Ltd
- Johnson, G. and Scholes, K. (1999) *Exploring Corporate Strategy, Fifth Edition*, Essex, Prentice Hall.
- Jomo, K. S. (2004) The New Economic Policy and Interethnic Relations in Malaysia, Identities, Conflict and Cohesion, Programme Paper No. 7, United Nations Research Institute for Social Development, Geneva.
- Jomo K. S. (1989) *Beyond 1990: Considerations For a New National Development Strategy*, Kuala Lumpur, University of Malaya, Institute of Advanced Studies.
- Jomo, K. S. (1990) *Growth and Structural Change in the Malaysian Economy*, London, Macmillan.
- Kadefors, A. (2005) Trust in Construction: Cognitive Traps as Obstacles to Collaborative Contracting Strategies. *Journal of Construction Procurement*, **11** (2), 112-122.
- Kajimo-Shakantu, K. and Root, D. (2006) Exploring the Significance of Preferential Procurement Policies for the South African Construction Industry, *in proceedings of the CIBW92 Procurement Systems Conference*, 29th November - 2nd December Salford Quays, Manchester, 298-309.
- Kanya, A. (2000) *The Colour of Business: Managing Diversity in South Africa*, P Shlettwein, Basel.
- Kennedy, R. (1993) *The United States: The Current Debate on Affirmative Action Development And Democracy*, Development and Policy Unit Foundation, Cape Town.
- King, P. (1998) Can you dig it? Affirmative Action and African Americans in the Construction Industry, Speech Delivered to. *National Association for Minority Contractors 29th Annual Conference: Gateway to the 21st Century*, 25 June 1998, Chicago, USA, Available online www.inmotionmagazine.com/pking.Htm. Accessed 06 May 2007.
- Klein, H. K. and Myers, M. D. (1999) A Set of Principles for Conducting and Evaluating Interpretive Field Studies in Information Systems. *MIS Quarterly*, **23** (1) 67-94.
- Klineberg, S. L. and Kravitz, D. A. (2003) Ethnic Differences in Predictors of Support for Municipal Affirmative Action Contracting. *Social Science Quarterly*, **84**, 425-440.
- Knox, K. (2004) A researcher's Dilemma – Philosophical and Methodological Pluralism. *Journal of Business Research Methods*, **2** (2), 119-128.

- Koon, H. P. (1997) The New Economic Policy and the Chinese Community in Peninsular Malaysia. *Developing Economics* **35** (3), 262 -292. Available online.
http://www.ide.go.jp/English/Publish/De/pdf/97_03_03.pdf.
- Kuhn, T. (1970) *The structure of Scientific Revolutions*, Second Edition, Chicago, University of Chicago Press.
- Kumaraswamy, M. M. (1997) Conflicts, Claims and Disputes in Construction. *Engineering Construction and Architectural Management*, **4** (2), 95-111.
- Kwan, K. and Tsang, E. W. K. (2001) Realism and Constructivism in Strategy Research: A Critical Realist Response to Mir and Watson. *Strategic Management Journal*, **22** (12), 1163-1168.
- Laffont, J. (2003) Introduction, In Laffont, J. (Ed.), *The Principal Agent Model: The Economic Theory of Incentives*, Cheltenham & Northampton, E. Elgar Publishers.
- Laffont, J. and Martmort, D. (2002) *The Theory of Incentives: The Principal-Agent Model*, Princeton and Oxford, Princeton University.
- Lanoue, G. (1992) Split Visions: Minority Business Set-Asides, *Annals of the American Academy of Political and Social Science: Affirmative Action Revisited* (Sept., 1992), **523**, 194-116.
- Lanti, I. G. (2004) Comparing Ethnic Minorities in Control and in Hegemonic Consociational Situations: The Political and Economic Roles of the Chinese in Malaysia and Indonesia, *Graduate Journal of Asia-Pacific Studies*, **2** (1), 69-82.
- Le Roux, H. (2005) Construction to Outpace National Growth, *Engineering News*, February, 25, Creamer Media, Johannesburg.
- Leedy, P. D. (1997) *Practical Research: Planning and Design*, New Jersey, Prentice-Hall.
- Lewis, J. D. (2001) *Policies to Promote Growth and Employment in South Africa*; World Bank Informal Discussion Papers on Southern Africa economy. World Bank Annual Forum, 10-12 September, Misty Hills, Muldersdrift.
- Lim, M. H. (1985) Affirmative action, Ethnicity and Integration: The Case of Malaysia, *Ethnic and Racial Studies*, **8** (2), 250 – 276.
- Lim, T. G. (1995) Social and Economic Integration of Different Ethnic Groups in South-East Asia, With Special Reference to Malaysia: A Review of the Literature and Empirical Material, International Labour Organisation (International Institute for labour Studies), Geneva.
- Lin, C. (1998) Bridging Positivist and Interpretivist Approaches to Qualitative Methods.

Policy Studies Journal **26** (1), 162-168.

Lin, T. Y. (1982) Interethnic Restructuring in Malaysia, 1970 – 1980: the Employment Perspective, *South East Asia Journal of Social Science*, 10 (2) 32 – 48.

Lincoln, Y. and Guba, E. (1985) *Naturalist Inquiry*, New York, Sage.

Lincoln, Y. S. and Guba, E. G. (1990) Judging the Quality of Case Study Reports. *Qualitative Studies in Education*, 3 (1), 53-59.

Lincoln, Y. S. and Guba, E. (2000) *Pragmatic Controversies, Contradictions and Emerging Confluences, Handbook of qualitative Research*, Thousand Oaks, California, Sage publications.

Lloyd, H. (2002) Small Medium Enterprises (Smes): *Instruments of Economic Growth and Development in a South African Regional Dispensation*, Available online www.ersa.org/ersaconfs/ersa02/cd-rom/papers/464.pdf., Accessed 17 July 2007.

Loosemore, M., Nguyen, B. T. and Denis, N. (2000) An Investigation into the Merits of Encouraging Conflict in the Construction Industry. *Construction Management and Economics*, **18** (4), 447 - 456.

Loosemore, M. A. (1999) A Grounded Theory of Construction Crisis Management. *Construction Management and Economics*, **17**, 9 -19.

Lopes, J. (1998) The Construction Industry and Macro-economy in Sub-Saharan Africa Post 1970. *Construction Economics and Management*, **16**, 637 – 649.

Loury, L. D. and Garman, D. (1993) Affirmative Action in Higher Education. *The American Review*, **83** (2), 99-103.

Loxton, L. (2005) *South African Skills Shortage must be Tackled*, Available online: www.tralac.org/scripts/content.php?id=4277, Accessed 15 March 2007.

Lundberg, S. (1991) The Enforcement of Equal Opportunity Laws Under Imperfect Information: Affirmative Action and Alternatives. *The Quarterly Journal of Economics*, **106** (1), 309-326.

Madi, P. M. (1998) *Black Economic Empowerment in the New South Africa: The Rights and Wrongs*, Randburg, Knowledge Resources.

Mahabane, . (2005) Broad-based, Maybe, But Please Put it to Good Use, *Sunday Times*, Cape Town, 5 June, 2005.

Mahalingam, A. and Levitt, R. E. (2004) Challenges on Global Projects – an Institutional Perspective, In Kalidindi, S. N. and Varghese, K. (Eds.), *in Project Procurement*

Infrastructure, New Delhi, Chennai, Mumbai, Kolkata, Narosa Publishing House., 247 – 254.

- Manchidi, T. E. and Harmond, I. (2002) Targeted Procurement in the Republic of South Africa: Independent Assessment, Unpublished Report for the Department of Public works, The Development Bank of Southern Africa and the International Labour Organisation.
- Marion, J. (2005) How Costly is Affirmative Action? Government contracting and California's Proposition 209, Working Paper, UC-Santa Cruz.
- Marr, K. (2007) The Codes Have Been Approved, What Happens Now, Available online: www.skillsportal.co.za Accessed 20 June 2007.
- Marshall, C. and Rossman, G. B. (1995) *Designing Qualitative Research*, Thousand Oaks, CA, Sage Publications.
- Mason, J. (1996) *Qualitative Research*, London, Thousands Oaks, New Delhi, Sage Publications.
- May, J. (1998) Poverty and Inequality in South Africa, Presentation at the Centre for Social and Development Studies, University of Natal, Available online at [Http://Www.Gov.Za/Reports/1998/Poverty/Presentation.Pdf](http://www.gov.za/reports/1998/poverty/presentation.pdf), Accessed 30 November 2006.
- Maze, J. (2001) Social Constructionism, Deconstructionism and Dome Requirements of Discourse, Special Issue: Social cConstructionism and its Critics. *Theory & Psychology* **11** (3), 393 – 417.
- Mbachu, J. I. C. and Folose, M. (2005) Under-representation of Women in the South African Construction Industry. QUT research week, 4-5 July, Brisbane Australia, Available online www.rics.org/NR/rdonlyres/D2A547C3-BB5C-4CD0-97B2-B7B027ACAF85/0/Under_representation_of_women20051125.pdf, Accessed 25 July 2007.
- Mbeki, T. (2001) The Eradication of Poverty in South Africa, ANC Today, 13 April, Available Online <http://www.anc.org.za/ancdocs/history/mbeki/2001/at12.html>, 02 February 2006,
- Mbeki, T. (2003) Letter From the President: Bold Step to end the 'Two Nations' Divide, ANC Today, 22 August, 2003, Available Online:<http://www.anc.org.za/ancdocs> Accessed 02 February 2006,
- McCord, A. (2003) An Overview of the Performance and Potential of Public Works

- Programmes in South Africa, paper prepared for the Dpru/Tips Forum, 8 – 10 Sept 2003, Johannesburg, Available online:
http://www.commerce.uct.ac.za/dpru/conference2003/Anna_McCord-pdf, Accessed 03 September 2006.
- McCrudden, C. (1995) Public Procurement and Equal Opportunities in the European Community a Study of Contract Compliance in Member States of the European Community and Under European Law Contract File No. SOC 9310257105 B04, Oxford University.
- McCrudden, C. (2004) Using Public Procurement to Achieve Social Outcomes. *Natural Urban Forum*, **28**, 257-267.
- McCrudden, C. and Gross, S. G. (2006) WTO Government Procurement Rules and the Local Dynamics of Procurement Policies: A Malaysian case study. *European Journal of International Law* **17** (1), 151-185.
- McCutcheon, R. T. (2001) Employment Generation in Public Works: Recent South African Experience. *Construction Management and Economics*, **19**, 275-284.
- Medhji, M. R. (2004) Sustainable Procurement Building Capacity in the Market (Infrastructure), in Kalindini, S and Varghese, K (Ed.), Project Procurement for Infrastructure Construction, 128 – 137., New Delhi, Narosa Publishing House.
- Merrifield, A. (1999), The Role of The Construction Industry in the Delivery of Infrastructure In South Africa; Chapter 4. Available online http://www.hsrapublishers.co.za/elibrary/infrastructure_Mandate_for_Change_1994-1999 Accessed 23 February 2007
- Meyer, J. W. and Rowan, B. (1977) Institutionalised Organisations: Formal Structure as Myth and Ceremony. *American Journal of Sociology*, **83**, 340-63.
- Miles, M. B. and Huberman, A. (1994) *A Qualitative Data Analysis: An Expanded Handbook, Second Edition*, Thousand Oaks, Sage publications.
- Ministry of Finance (1997) Malaysian Government Procurement, *Eighth International Conference on Public Procurement*, Kuala Lumpur, Malaysia,
- Mintzberg, H. (1994) *The Rise and Fall of Strategic Planning*, London, Prentice Hall.
- Mir, R. and Watson (2000) A Strategic Management and the Philosophy of Science: The Case for a Constructivist Methodology. *Strategic Management Journal*, **21** (9), 941-953.
- Mir, R. and Watson, A. (2001) A Critical Realism and Constructivism in Strategy Research:

- Towards a Synthesis. *Strategic Management Journal*, **22** (12), 1169-1173.
- Mjoli-McCube, N. (2005) Opportunities for Women In Housing And Construction. In *Proceedings of the Conference on Creating Sustainable Human Settlements*, March 2005, Durban, Available online
<http://housing.kzntl.gov.za/conference/Opportunities%20for%20women%20in%20construction%20Durban%20conference.pdf>, Accessed 25 July 2007.
- Mohamed, S. (2004) The Debate about the Role of the State, Available online
<http://www.polity.org.za/pol/opinion/seeraj/?show=48500.htm>,
- Moloi, M. (2006) Combating Corruption and Fronting. *Building Women*, 32-33, available online [Http://www.sabinet.co.za/journals/online journals.html](http://www.sabinet.co.za/journals/online%20journals.html); accessed 20th March 2007
- Moore, J. D. (2006) Women in Construction Management: Creating a Theory of Career Choice and Development, Unpublished PhD Thesis, Colorado State University.
- Morand, P. (2003) SMEs and Public Procurement. *Policy Review of Economic Design*, **8**, 301-318.
- Morgan, G. and Smirch, L. (1980) The Case for Qualitative Research, *Academy of Management Review*, **5**, 491-500.
- Morledge, R. and Adnan, H. (2005) The Importance of Trust to the Success of Joint Venture Projects, *Journal of Construction Procurement*, **11**, (2), 154 –165.
- Morton, R. (2002) *Construction UK: Introduction to the Industry*, Oxford, Blackwell Publishing.
- Mowson, N. (2005) Accelerated Roll Out – Public Infrastructure Investment to Rise To R111 Billion in 2006, *Engineering News*, 25, 6, Creamer Media, Johannesburg.
- Msimang, S. (2001) Affirmative Action in the New South Africa: The Politics of Representation, Law and Equity, Available online
<http://www.isiwomen.org/pub/wiawcar/affirmative.htm> Accessed 20 June 2006.
- Muller, K. (2006) Preferential Procurement and Black Economic Empowerment: Implications for European Construction Companies in South Africa, Unpublished Diploma Thesis, Fachhochschule Mainz, University of Applied Sciences, Germany.
- Muradzikwa, S., Smith, L. and de Villiers, P. (2004) *Economics*, Cape Town, Oxford University Press Southern Africa.
- Murdick, R. G., Moor C R, Babson, H. C. and Tomlinson, W. H. (2000) *Business Policy and Strategy: An Action Guide, Sixth Edition*, Boca Raton, London, New York,

Washington DC, CHC Press.

- Muruyama, G. (2004) Racial Equity and Diversity, Taking the Viable Approach is Crucial: A Comment on Renner and Moore, *Analyses of Social Issues and Public Policy*, **1**, 251-253.
- Myers, S. and Chan, T. (1996) Who Benefits from Minority Business Set-Asides? The Case of New Jersey. *Journal of Policy Analysis and Management*, **15** (2), 202-226.
- Naegelen, F. and Mougeot, M. (1998) Discriminatory Public Procurement Policy and Cost Reduction Incentives. *Journal of Public Economics*, **67**, 349-367.
- Naoum, S. G. (1998) Dissertation Research and Writing for Construction Students, Oxford, Butterworth-Heinemann.
- National Treasury (2006) *A Peoples Guide to the 2006 Budget*: National Treasury Communications Directorate, Government Printers, Pretoria. Available online <http://www.treasury.gov.za>, Accessed 5 May, 2006.
- National Treasury (2003) *Intergovernmental Fiscal Review*, Pretoria, Government Printers.
- Nduru, M. (2004b) In South Africa, Blacks Still at Bottom of Ladder, available online <http://oneworld.net/article/view/80761/12007/06/20>., Accessed 20 June 2007.
- Neuman, W. L. (2000) *Social Research Methods: Qualitative and Quantitative Approaches, Fourth Edition*, Boston, Allyn & Bacon.
- Newcombe, R. (1990) The Evolution and Structure of The Construction Firms, in *Proceedings CIB 90 Joint Symposium on Building Economics and Construction Management*, Sydney, **6**, 358-369.
- North, D. C. (1990) *Institutions, Institutional Change and Economic Change: Political Economy of Institutional Decisions*, Cambridge, Cambridge University.
- North, D. C. (2005) *Understanding the Process of Economic Change*, Princeton and Oxford, Princeton University.
- Ntuli, Z. (2005) Fronting Companies Under Fire from Government, Available online http://www.skills_portal.co.za/black_economic_empowerment/46879.htm, Accessed 20 June 2006.
- Nzimande, B. (2005) Black Economic Empowerment in South Africa (Notes towards a lecture, delivered at the Centre of the International Political Studies), University of Pretoria, Available Online: <http://www.sacp.org.za> Accessed 06 July 2006.
- O'Callaghan, J. (1996) Grounded Theory: A Potential Methodology. *Counselling*

- Psychology Review*, **11** (1), 23 – 28.
- Ofori, G. (1988) Construction Industry and Economic Growth in Singapore. *Construction Economics and Management*, **6**, 57-70.
- Ofori, G. (1990) *The Construction Industry: Aspects of its Management and Economics*, Singapore, Singapore University Press, Singapore.
- Ofori, G. (1991) Programmes for Improving the Performance of Contracting Firms in Developing Countries: A Review of Approaches and Appropriate Options. *Construction Management and Economics*, **9**, 19 – 38.
- Ofori, G. (1995) *Policies and Measures for Small Contractor Development*, UNCHS, Nairobi, Kenya.
- Ofori, G. (2001) Indicator for Measuring Construction Industry Development in Developing Countries. *Building Research & Information*, **29** (1), 40-50.
- Ofori, G., Hindle, R. and Hugo, F. (1996) Improving the Construction Industry in South Africa. A Strategy. *Habitat International*, **20** (2), 203 – 220.
- Ohlin, G. (1992) Varieties of Policy in 3rd World, In Putterman, L. and Rueschemeyer, D. (Eds.), *State and Market in Development: Synergy or Rivalry?*, 9-14., Boulder and London, Lynne Rienner Publishers.
- Oliver, C. (1991) Strategic Responses to Institutional Processes. *Academy of Management Review*, **16**, 145-79.
- Ong, P. (1999) *Impact of Affirmative Action: Policies and Consequences in California*, Alta Mira Press London.
- Open University (1993) Unit 17/18 Analysis of Unstructured Data, in *Principles of Social Educational Research*, 3-35, Milton Keynes, Open University.
- Opotow, S. (1997) What's Fair (Justice and Affirmative Action). *Behavioural Scientist*, **41** (2), 232-246.
- Osmon, H. (1999) Quantitative "Versus" Qualitative Research: The Wrong Question, Available online: http://cais.ca/proceedings/1995/osmon_1995.pdf, Accessed 08 July 2007.
- Ostrom, E. (1999) Institutional Rational Choice: an Assessment of the Institutional Analysis and Development Framework, in Sabatier, P. A. (Ed.), *Theories of the Policy Process*, 35 – 71, Boulder, Co, Westview Press.
- Ostrom, E., Schroeder, L. and Wynne, S. (1993) *Institutional Incentives and Sustainable*

Development: Infrastructure Policies in Perspective, Boulder, San Francisco, Oxford, Westview Press.

- Papnek, G. F. (1992) The Effects of Government Intervention on Growth and Equity: Lessons from Southern Asia; In Putterman, L. and Rueschemeyer, D. (Eds.), *State and Market in Development: Synergy or Rivalry?* 131-167, Boulder and London, Lynne Rienner Publishers.
- Parkhe, A. (1993) Messy Research, Methodological Predispositions and Theory Development in International Joint Ventures. *Academy of Management Review*, **18** (2), 227-268.
- Partington, D. (2002) Grounded Theory, In Partington, D. (Ed.), *Essential Skills for Management Research*, 136 – 157, London, Sage.
- Perry, C. (1996) Notes for Candidates and their Supervisors, Available online <http://www.brunel.ac.ac.uk/depts/sps/phs/cp5.html>, Accessed 07 July 2005.
- Popper, K. (1959) *The Logic of Scientific Discovery*, London, Hutchinson.
- Porter, M. E. (1980) *Competitive Strategy: Techniques for Analysing Industries and Competitors*, New York, Free Press/Simon Schuster Inc.
- Porter, M. E. (1985) *Competitive Advantage: Creating and Sustaining Superior Performance*, New York, Free Press.
- Posner, R. A. (1987) The Constitution as an Economic Document. *Law Review* **56**, 4-38.
- Proctor, S. (1998) Linking Philosophy and Method in the Research Process: The Case for Realism. *Nurse Researcher*, **5** (4), 73-90.
- Przeworski, A. (1998), The State in a Market Economy in Tilly, C. , Nelson, J. and Walker, L. (Eds.) *Transforming Political Post Communist Economies*, , Available online <http://www.books.ngs.edu/html/transform/ch16.htm>, Accessed 06 August 2006
- Punch, F. K. (1998) *Introduction to Social Research: Quantitative and Qualitative Approaches*, London, Thousand Oaks and New Delhi, Sage publications.
- Putterman, L. and Rueschemeyer, D. (1992) State and Market in Development: An Introduction, In Putterman, L. and Rueschemeyer, D. (Eds.), *State and Market in development: Synergy or Rivalry?* 1-6, Boulder and London, Lynne Rienner Publishers.
- Quinn, J. (1980) *Strategies for Change – Logical Incrementalism*, Richard D, Irwin, Homewood Il.

- Qunta, C. (1995) *Who's Afraid of Affirmative Action: A Survival Guide for Black Professionals*, Cape Town, Kwela.
- Radebe, S. (2006) A Tool to Assess Real Effects of BEE, *Financial Mail* Special Edition Top Empowerment Companies, March 10,
- Raftery, J., McGeorge, D. and Walters, M. (1997) Breaking Up Methodological Monopolies: a Multi Paradigm Approach to Construction Management Research. *Construction Management and Economics*, **15** (3), 291-297.
- Ram, M., Smallbone, D. and Linneker, B. (2002) Assessing the Potential of Supplier Diversity Initiatives as a Means of Promoting Diversification among Ethnic Minority Business in the UK, Centre for Enterprise and Economic Development Research (CEEDR), Middlesex University,
- Ramasamy, R. (1993) Racial Inequality and Social Reconstruction in Malaysia. *Journal of Asian and African Studies*, **XXVIII** (3-4), 217-229.
- Ratzka, A. D. (1991) The Case for Accessibility Legislation in a Market Economy in the *Report of the CIB Expert Seminar on Building Non-Handicapping Environments*, Budapest 1991.
- Raza, A. M., Anderson, J. A. and Custard, J. G. H. (1999) *The Ups and Downs of Affirmative Action Preferences*, Westport, Praeger Publishers.
- Rebello, E. (2005) Small Business, SA's Biggest Test, *Engineering News*, 25, 1, Creamer Media, Johannesburg.
- Remenyi, D., Williams, B., Money, A. and Swart, E. (1998) *Doing Research in Business and Management: An Introduction to Process and Method*, London, Thousand Oaks, New Delhi: Sage Publications.
- Remenyi, D., and Money, A. (2004) Adding Something of Value to the Body of Theoretical Knowledge? *In Proceedings of the 3rd European Conference; Research Methods in Business Management*, Blackhorse House; University of Reading; 29-30th April; 291-298.
- Renner, K. E. and Moore, T. (2004) The More Things Change, The More They Stay The Same: The Elusive Search for Racial Equity in Higher Education. *Analyses of Social Issues and Public Policy*, **4** (1), 227-241.
- Reyna, C., Tucker, A., Korfmacher, W. and Henry, P. J. (2005) Searching for Common Ground Between Supporters and Opponents of Affirmative Action. *Political Psychology* **26** (5), 667-682.

- Rice, M. F. (1992) Justifying State and Local Government Set-Aside Programs Through Disparity Studies in the Post-Croson Era. *Public Administration Quarterly*, 482-490.
- RICS (2005) SA Construction Industry 'Needs to Double Output, Available online: www.rics.org/builtenvironment/buildingtrades/sa_output161205.htm, Accessed 20/03/2006.
- Rittel, H. and Webber, M. (1973) Dilemmas in a General Theory of Planning. *Policy Sciences*, 4, 155 – 169.
- Robert, W. (2006) The Relationship Between South Africa's Trade Strategy and ASGISA, Available online www.tralac.org/scripts/content.php?id=4539, Accessed 23 March 2006.
- Rogerson, C. M. (2004) Pro-poor Local Economic Development in South Africa: the application of public procurement. *Urban Forum*, 15, (2), 180-210.
- Root, D., Fellows, R. and Hancock, M. (1997) Qualitative Versus Quantitative Or Positivism and Interactionism – A Reflection of Ideology in the Current Methodological Debate? *Journal of Construction Procurement*, 3 (2), 34-44.
- Root, D. S. (2000) The Influence of Professional and Occupational Cultures on Project Relationships Mediated Through Standard Forms and Conditions of Contract, Unpublished PhD Thesis, University of Bath.
- Rozakis, L. (2004) *Research Methods*, Indianapolis, Alpha Penguin Group.
- RSA (1994) White Paper on Reconstruction and Development, *Government Gazette*, No. 16085, Government Printer, Pretoria.
- RSA (1995a) *Public Sector Procurement Reform in South Africa: Interim Strategies: A 10 Part Plan*, Ministry of Finance and Ministry of Public Works 1995, Pretoria.
- RSA (1995b) White Paper on National Strategy for the Development and Promotions of Small Business in South Africa *Government Gazette*, No 16317, Department of Trade and Industry, Government Printers: Pretoria.
- RSA (1996a) *Growth, Employment and Redistribution: A Macroeconomic Strategy*, Department of Finance (available at: <http://www.finance.gov.za/documents/gear/all.Pdf>, Accessed 5th May, 2007.
- RSA (1996b), Constitution of the Republic of South Africa, Act No. 108, *Government Gazette*, No. 17678, Government Printer, Pretoria.

- RSA (1997) Green Paper on Public Sector Procurement Reform in South Africa, Ministry of Finance and Ministry of Public Works, *Government Gazette* No 17928, Government Printer, Pretoria.
- RSA (1999), *White Paper 1999 on Creating an Enabling Environment for Reconstruction, Growth and Development in the Construction Industry* Department of Public Works, Department of Public Works, Pretoria.
- RSA (1998a), Employment Equity Act, 55 of 1998. *Government Gazette*, No. 19370, Pretoria.
- RSA (1998b), Resource Specification for Targeting of Affirmable Business Enterprises, South African edition, Department of Public Works, Government Printers, Pretoria.
- RSA (2000a) Preferential Procurement Policy Framework Act, 5 of 2000. *Government Gazette*, Pretoria.
- RSA (2000b) CIDB Act No. 38 of 2000 *Government Gazette* No. 26427 Government Printers. Pretoria.
- RSA (2003), Act, No. 5 of 2003, Broad Based Black Economic Empowerment Act, 53 of 2003. *Government Gazette*, No.25899, Government Printers, Cape Town.
- Runeson, G. (1997) The Role of Theory in Construction Management Research: Comment. *Construction Management and Economics*, **15**, 299-302.
- Rwelamila, P. D., Hindle, R. and Ofori, G. 1997 The Role of the Public Sector in the South African Construction Industries, in *Proceedings of the 1st National conference on Construction Industry Development; Building the Future Together*, National University of Singapore, December, 171-178.
- Sahle, D. (2002) Procurement – A Tool to Address Key Development and Social Issues. *ASSIST Bulletin*, **14**, (1-4).
- SARB (2006) Quarterly Economic Review, Available online:
[http://www.reservebankco.za/internet/Publication.nsf/LADV/8A1DA102BDD3188F4225723C003A1A7F/\\$File/REV122006.pdf](http://www.reservebankco.za/internet/Publication.nsf/LADV/8A1DA102BDD3188F4225723C003A1A7F/$File/REV122006.pdf), Accessed 15 March 2007.
- Saunders, M. (1997) *Strategic Purchasing and Supply chain management*, London, Pitman Publishing.
- Saunders, M. and Lewis, P. (2003) *Research Methods for Business Students, Third edition*, Thornhill, Prentice Hall.

- Scrivastava, V. (2003) India's Accession to the Government and Procurement Agreement: Identifying Costs and Benefits, in Mattoo, A. and Stern, R. M. (Eds.), *India and the WTO*, World Bank and Oxford University Press.
- Seale, C. (1999) *The Quality of Quantitative Research: Introducing Qualitative Methods*, London, Thousand Oaks, New Delhi, Sage publications,.
- Sekhon, V. S. (2004) Maintaining the Legitimacy of the High Court: Understanding the "25 Years" in Grutter V. Bollinger. *Connecticut Public Interest Law Journal* Paper 12, 359-370.
- Sen, A. (1989) The Profit Motive (1st published 1983) Reprinted *The Market Trial Lloyds Bank Annual Review*, **2**, 106 – 124.
- Seymour, D., Crook, D. and Rooke, J. (1997) The Role of Theory in Construction Management: A Call for Debate. *Construction Management and Economics*, **15**, 117-119.
- Seymour, D., Crook, D. and Rooke, J. (1998) The Role of Theory in Construction Management: A Reply to Runeson, *Construction Management and Economics*, **16**, 109-112.
- Shah, M. and Ram, R. (2006) Supplier Diversity and Minority Business Enterprise Development: Case Study Experience of Three US Multinationals, *Supply Chain Management: An International Journal*, **11** (1), 75-81.
- Shakantu, M. W. (2004) An Investigation into Building and Waste Logistics: The Case of Cape Town, *Unpublished PhD Thesis*, Glasgow Caledonian University, UK.
- Shakantu, M. W., Kajimo-Shakantu, K., Saidi, F. and Mainga, W. (2006) Bridging the Informal, Formal and Indigenous Construction Knowledge Systems to Resolve the Construction Skills Shortage. 4th Postgraduate conference of the CIDB on Construction Industry Development, 8 - 10 October 2006, Stellenbosch, South Africa, 176 -182,
- Shakantu, W., Kaatz, E. and Bowen, P. A. (2002) Partnering with Small, Micro And Medium Enterprises (Smmes) to Meet Socio-Economic Sustainability Objectives at Cape Town International Convention Centre (CTICC). *In Proceedings of the CIB W107 International Conference on Creating a Sustainable Construction Industry in Developing Countries*, 11-13 November, Cape Town, 261 - 296,
- Shih, F. J., Blackwell Science Ltd. (1998) Triangulation in Nursing Research: Issues of Conceptual Clarity and Purpose. *Journal of Advanced Nursing* **28** (3), 631-641.

- Sidanius, J., Devereux, E. and Pratto, F. (2001) A Comparison of Symbolic Racism Theory and Social Dominance Theory as Explanations for Racial Policy Attitudes. *The Journal of Social Psychology*, **132** (3), 377-395.
- Sidanius, J., Pratto, F. and Bobo, L. (1996) Racism, conservatism, affirmative action and intellectual sophistication: A matter of principles conservatism or group dominance? *Journal of Personality and Social psychology*, **70** (3), 476-490.
- Singh, H. (2001) Ethnic Conflict in Malaysia Revisited. *Commonwealth & Comparative Politics*, **39** (1) 42-65.
- Skrentny, J. D. (1996) *The Ironies of Affirmative Action: Politics Culture and Justice in America*, Chicago and London, The University of Chicago Press.
- Smith, A. (Ed.) (1776) *An Inquiry into the Nature and Causes of the Wealth of Nations*, Oxford, Clarendon Press.
- Soderlund and Schutte (1998) Malmesbury Prison Project Review: A Review of the Malmesbury Prison Complex and Associated Housing Estate, prepared for the National Department of Public Works.
- Southall, R. (2004) The ANC and Black Capitalism in South Africa, *Review of African Political Economy*, **100**, 313 -328.
- Sowell, T. (2003) Affirmative Action Quotas on Trial, *Capitalism Magazine*, Available online <http://www.capmag.com/article.asp?ID=2340>, Accessed 28 February 2007,
- Stacey, R. D. (1990) *Dynamic Strategic Management for the 1990's*, London, Kogan Page.
- Stahl, B. C. (2003) How We Invent What We Measure: A Constructionist Critique of The Empiricist Bias in IS research, in *Proceedings of the Ninth Americas Conference on Information Systems (AMCIS)* 4 -6 August, Tampa, Florida, pp. 2878-2884.
- StatsSA (2002) Earning and Spending Power in SA, Selected Findings from the Income and Expenditure of October 1995 and October 2000, Pretoria.
- StatsSA (2007) Key Indicators, Available online http://www.statssa.gov.za/Keyindicators/GDP/factsheet_082007.pdf, Accessed 6 December 2007.
- StatsSA (2006) Labour Force Survey, March 2006, Available online <http://www.statssa.gov.za/Publications/P0210/P0210>, Accessed 17 March 2007.
- Steyn, P. (2004) A level playing field, Available Online <http://www.legalweek.com/documents/UPDATES/LU-1104-p10-11.pdf>., Accessed 09 September 2005.

- Strategic Procurement Systems (2007) Targeted procurement, Available online <http://www.targetedprocurement.co.za/papers/Background.htm>, Accessed 20 July 2007.
- Strauss, A. and Corbin, J. (1990) *Basics of Qualitative Research: Grounded Theory Procedures and Techniques*, Newbury Park, Sage publishers.
- Strauss, A. and Corbin, J. (1998) *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*, Thousand Oaks, Sage publications.
- Streeten, P. P. (1992) Against minimalism in State and Market, In Putterman, L. and Rueschemeyer, D. (Eds.), *State and Market in development Synergy or Rivalry?* 15-18, Boulder and London, Lynne Rienner Publishers.
- Strydom, P. D. F. (2005) Black Economic Empowerment in South Africa, Available online <http://www.sabusiness.com/section/content.php> Accessed 20 July 2007.
- Suinn, R. (2001) Documenting the Positive Case for Affirmative Action, *Analyses of Social Issues and Public Policy*, 89-93.
- Sweet, M. (2006) Minority Business Enterprise Programmes in the United States of America: An Empirical Investigation. *Journal of Law and Society*, **33** (1), 160-180.
- Thai, K. V. (2001) Public Procurement Re-examined, *Journal of public procurement*, 1 (1), 9-50.
- The FW de Klerk Foundation (2005) Transformation and Black Economic Empowerment in South Africa, The FW de Klerk Foundation, Cape Town, South Africa.
- Thomas, G. and Thomas, M. (2005) *Construction Partnering and Integrated Team work*, Oxford, Blackwell Publishing.
- Thompson, F. (2004) Black Economic Empowerment in South Africa: The Role of Parastatals and Choices for The Restructuring of The Electricity Industry, Paper Presented at the *ICS/CAS International Conference Looking at South Africa Ten Years On*, 10-12 September 2004, London.
- Thwala, W. D. (2005) Job Creation through Labour Intensive Public Works Programmes in South Africa: Lessons for South Africa, 3rd CIDB Postgraduate Conference, 9-11 October, Johannesburg, South Africa, 314-320.
- Tischler, H. L. (2001) *Introduction to sociology, Seventh Edition*, Singapore, South Melbourne, Toronto, London, Wadsworth Thomas Learning Inc.
- UNCHS (1996) Policies and Measures for Small Contractor Development in the Construction Industry, HS/75/95E, United Nations Centre for Human Settlement,

Nairobi.

UNCITRAL (1995) Model Law on Procurement of Goods, Construction and Services, United Nations Commission for the International Trade Law, United Nations, New York.

UNDP (2003) Human Development Report 2003, United Nations, Washington.

Van der Nest, D. (2004) The Impact of Black Economic Empowerment on the Management of Small Companies in South Africa, Unpublished Short Dissertation, Rand Afrikaans University, Johannesburg.

Verma, V. K. (1995) *Human Resource Skills for the Project Manager* Project Management Institute, Newton Square.

Voight, T. L. (2003) Purchasing Governance and Control for the Rand Afrikaans University, *Unpublished Ph.D (D.Com) Thesis*, Available online http://etd.rau.ac.za/theses/available/etd_05042004_101648.pdf., Accessed 21 February 2006.

Watermeyer, R. (2000,) The Use of Targeted Procurement as an Instrument of Poverty Alleviation and Job Creation in Infrastructure Projects. *Public Procurement Law Review*, **5**, 226-250 Available online www.targetedprocurement.com.

Watermeyer, R. (2002) The Use of Procurement to Attain Labour-Based and Poverty Alleviation Objectives in Mason, D. J., Labour-Based Technology: A Review of Current Practice, *Papers of the Ninth Regional Seminar*, Harare, ASSIST International Labour organisation. 2, 209-234.

Watermeyer, R. (2004a) Tools and Techniques to Facilitate the Alignment of Public and Donor procurement Systems to Promote Sustainable Development Objectives. *Public Sector Procurement Law Review*, (1), 30-55.

Watermeyer, R. (2004b) Project Synthesis Report: Unpacking Transparency in Government Procurement – Rethinking WTO Government Procurement Agreements, Cuts International.

Watermeyer, R. B. (1998) Procurement Strategies to Achieve Socio-Economic Objectives. Workshop On Affirmative Procurement in the Construction Industry, 20 September, 13 October, 22 October, Dubai, Midrand, Cape Town,

Watermeyer, R. B. (2003b) Implementing Preferential Procurement Policies in the Public Sector Of South Africa. Technical paper, *Journal of South Africa Institute of Civil Engineering*, **45** (3), 11 – 22

- Watermeyer, R. B. (2003a) A Standardised Approach to Procurement, IMIESA, 13 – 19.
- Watermeyer, R. B., Gounden, S. M., Letchmiah, D. R. and Shezi, S. (1998) Targeted Procurement: A Means by Which Socio-Economic Objectives Can Be Realised Through Engineering and Construction Works Contracts. *Journal of the South African Institute of Civil Engineering*, **40** (4), 16 – 25.
- Watkins, J. A. (2006) Theses/Dissertation/Research Reports: A Practical Guide for Students to the Preparations of Written Presentations of Academic Research: Cranefield Institute of Management, Content Solutions Publishers.
- Weber, R. (2004) The rhetoric of positivism versus Interpretivism: A Personal View. *MIS Quarterly* **28** (1), iii-xii.
- Weiner, M. (1993) *Summary Comments on the Affirmative Action Workshops, Development and Democracy*, Urban Foundation, Cape Town.
- Wells, J. (1986) *The Construction Industry in Developing Countries: Alternative Strategies for Development*, London, Croom Helm.
- Welman, J. C., Kruger, S. J. and Mitchell, B. (2005) *Research Methodology for the Business and Administrative Sciences Third Edition*, Cape Town, and Oxford University Press Southern Africa.
- Whitfield, J. (1994) *Conflicts in Construction: Avoiding, Managing, Resolving*, Houndmill, Basingstoke, Hampshire, London, Macmillan.
- Wilcock, C. (2005) *Leveraging Public Works Programmes to Maximise Economic Development*, In *Proceedings Of the 24th Southern African Transport Conference, 11-13 July 2005, Pretoria, Document Transformation Technologies*, 59-69.
- Williams, M. and May, T. (1996) *Introduction to the Philosophy of Social Research*, London, UCL Press.
- Wilmore, L. (1997) Discrimination Report on the World Social Situation, United Nations Expert Group Meeting on Managing Diversity in the Civil Service, United Nations Headquarters, New York.
- Winch, G. M. (2002) *Managing Construction Projects*, Oxford, Blackwell Science.
- Wing, C. K., Raftery, J. and Walker, A. (1998) The Baby and the Bathwater: Research Methods in Construction Management. *Construction Management & Economics*, **16**, 99-104.
- Wolf, C. J. (1979) A Theory of Non-Market Failure: Framework for Implementation analysis, *Journal of Law and Economics*, **22**, 107-139.

- Wood, G. (2006) Addressing the Economic Realities of Partnering Arrangements Within the UK Construction Industry in *Proceedings of the CIBW92 Procurement Systems Conference*, 29th November - 2nd December 2006, Salford Quays; Manchester, 614-625.
- World Bank (2000) World Development Report 1999/2000, World Bank, Washington, DC.
- World Bank (1995) World Development Report 1994/1995, World Bank, Washington, DC.
- World Bank (1984) The Construction Industry: Issues and Strategies in Developing Countries, Report No 13531, World Bank, Washington DC.
- World Bank (2003) South Africa – Country Procurement Report: Refining The Public Procurement System, Report No. 25751, World Bank, Washington DC.
- World Bank (2005) Skill Shortages, Major Investment Concern in South Africa, Available online: www.noticias.info/asp/aspcomunicados.asp?nid=128258, Accessed 18th March 2007.
- Yin, K. (1994) *Case Study Research: Design and Methods*, Newbury Park, CA, Sage publications.

9.0 APPENDICES

APPENDIX 1: DESCRIPTIONS OF THE BEE CODES

Code	Criteria	Description
000	Conceptual Framework of B-BBEE	General Principles and the Generic Scorecard
100	Ownership	Measures effective ownership of enterprises by black people
200	Management Control	Measures effective control of enterprises by black people
300	Employment Equity	Measures initiatives intended to achieve equity in the workplace
400	Skills Development	Measures the extent to which employers carry out initiatives designed to develop the competencies of black employees
500	Preferential Procurement	Measures the extent to which enterprises buy goods and services from BEE Compliant suppliers as well as black owned entities
600	Enterprise Development	Measures the extent to which enterprises carry out initiatives contributing to Enterprise development
700	Socio-economic Development (Residual factor)	Measures the extent to which enterprises carry out initiatives contributing to socio-economic development

Source: RSA (2007a)

APPENDIX 2: CURRENT STATUS OF CIDB CONTRACTOR REGISTERS

2.1 Contractor Classification by Class of Work

As at		Class of Works				
4-13-2007						
Designation	GB	CE	ME	EE	SW	Total
1	15360	3522	634	508	1851	21875
2	1474	690	140	130	207	2641
3	519	284	64	61	42	970
4	462	485	77	102	77	1203
5	194	239	68	80	55	636
6	157	197	28	32	19	433
7	58	118	17	18	15	226
8	15	38	3	5	7	68
9	19	24	10	2	4	59
Total	18258	5597	1041	938	2277	28111

There have been 1200 successful upgrades on the register i.e. contractors improving on their gradings. 85% are black owned enterprises

Source: CIDB (2007)

2.2 Classifying Black Owned Construction Firms by Grade

Black Owned by Grade			
Designation	Total	Black Owned	% of Total
1	21875	21323	97
2	2641	2370	90
3	970	863	89
4	1203	979	81
5	636	453	71
6	433	288	67
7	226	96	42
8	68	17	26
9	59	0	0
Total	28111	26389	94
Medium sized contractors = 79% black ownership			

Source: CIDB (2007)

2.3 Classifying Women Owned Construction Firms by Grade

Women Owned by Grade			
Designation	GB	Women Owned	% of Total
1	21875	11162	51
2	2641	1213	48
3	970	494	51
4	1203	470	39
5	636	200	31
6	433	92	21
7	226	29	13
8	68	1	1.5
9	59	0	0
Total	28111	13661	49

Source: CIDB (2007)

2.4 Classifying Classes of Work in Relation to Grades

Grade	Classes of Work				
	GB%	CE%	ME%	EE%	SW%
1	98	97	85	92	93
2	94	93	88	84	67
3	97	92	56	72	65
4	90	83	56	69	43
5	88	79	56	62	38
6	74	57	54	59	26
7	56	40	38	12	25
8	50	22	0	0	0
9	0	0	0	0	0

Note that organisations may hold more than one designation e.g. 5GB and 4CE the same time

Source: CIDB (2007)

APPENDIX 3: CIDB JV GRADING GUIDELINES

Joint Venture Combinations	
Joint venture combinations to achieve A higher grade	Grade achieved by the Joint Venture
Three Grade 2 contractors	3
Three Grade 3 contractors	4
Two Grade 4 contractors or One Grade 4 and two Grade 3 contractors	5
Two Grade 5 contractors or One Grade 5 and two Grade 4 contractors	6
Two Grade 6 contractors or One Grade 6 and two Grade 5 contractors	7
Three Grade 7 contractors	8
Three Grade 8 contractors	9

Source: CIDB (2007)

APPENDIX 4: INTERVIEW GUIDE 1 (FOR CONTRACTORS)

Project Title: An investigation into the responses of the construction industry to preferential procurement in South Africa: A Grounded Theory Approach

Time of Interview:

Date:

Place:

Interviewee:

Position of Interviewee:

Gender:

Race:

A Background Information

- 1 How long you have been working in: a) construction industry b) this particular firm?
- 2 How long has this firm been established?
- 3 What is the company structure?
- 4 What is your major source of work? Private% Public%
- 5 What is your organisation's primary participation in the construction industry?
- 6 What is your equity ownership profile?

Ownership	Women%	White%	Black%
Management	Women%	White%	Black%
- 7 What is the BEE status of the organisation?
Black owned, black empowered, other, specify.....

B Translation of preferential procurement policies into practice

- 1 Describe your experiences in tendering for work from the public sector clients?
- 2 What are the main compliance issues associated with public sector work?

C Effect of preferential procurement policies

- 1 What has happened in your organization since government introduced preferential procurement policies?
- 2 How have empowerment legislations impacted on your businesses? Which ones in particular?

3 What are the main challenges and problems associated with preferential procurement policies?

4 To what extent do you think the implementation of preferential procurement policies deliver the benefits or stated goals of the policy?

D Evolvment of procurement policies and industry practices

1 How have government procurement policies and industry practices changed over time?

2 What factors do you experience or observe as influencing the realisation of government's objectives of BEE through preferential procurement?

3 How are the policies affecting the industry?

E Joint Ventures

1 Have you ever been in a in a joint venture?

2 What were the reasons?

3 What were the criteria for choosing the joint venture partner?

4 What resources / benefits did your firm bring to the joint venture?

6 What is the nature of the relationship in a joint venture?

Thank you.

APPENDIX 5: INTERVIEW GUIDE 2 (CONTRACTORS' FOLLOW-UP)

A) POLICY RELATED ISSUES

1. What is involved in filling in tender documents for public sector work?
2. What problems have you experienced with preferential procurement policies?
3. What is your experience with “fly by night” PDI companies?
4. How is the public sector tender adjudication processes?
5. What differences do you experience between preferential procurement policies on paper and policies on the ground?
6. How are firms coping with the changing government policies?
7. What has happened in your organisation since government preferential procurement policies were introduced?

B) JOINT VENTURE AND SUBCONTRACTING ISSUES

1. Describe your experiences in joint ventures?
2. What are your general views on joint ventures?
3. What kind of relationships exists between main contractors and sub-contractors?
4. What criteria are used for choosing sub-contractors?

C) CIDB REGISTRATION AND GRADATION ISSUES

1. In what way has the CIDB registration gradation affected you?
2. What is your experience with company registration requirements?
3. What are the advantages and/or disadvantages for you to be in the grade you are in as opposed to another?

D) SKILLS AND LABOUR RELATED ISSUES

1. Is there a relationship between skills availability and preferential procurement?
2. Please explain your answer

E) FINANCE RELATED ISSUES

1. How are bank guarantees or performance bonds or sureties affecting your tendering abilities?
2. How is your financial standing in relation to tendering for public sector work?

APPENDIX 6: INTERVIEW GUIDE 1 (FOR CLIENTS)

OPTION ONE

1. What does the tender adjudication process involve?
2. What is your position regarding tender price adjustments/escalations?
3. Under what circumstances do you cancel tenders?
4. In awarding tenders, what are the (overriding) factors that you consider?
5. Do you have any rules or preference regarding joint venture formation by contractors of different CIDB grading?
6. What criteria are used for choosing projects to be reserved under Mama Special?
7. What tools are available for monitoring that contractors adhere to the specific requirements of a tender?
8. What is being done and by who, to ensure that HDE's are growing?
9. What problems do you experience with preferential procurement?

OPTION TWO

1. What does the tender adjudication process involve?
2. What is your position regarding tender price adjustments/escalations of items?
3. Under what circumstances do you cancel tenders?
4. In awarding tenders, what are the (overriding) factors that you consider?
5. Do you have any rules or preference regarding joint venture formations by contractors of different CIDB grading?
6. Do you have any tenders reserved specifically for women contractors?
7. What tools are available for monitoring that contractors adhere to the specific goals of a tender?
8. What problems do you experience with preferential procurement?

APPENDIX 7: SAMPLES OF 2 INTERVIEW TRANSCRIPTS

SAMPLE 1

Time of Interview: 14:10 hrs

Date: 23/09/2006

Place: Airport Industria

Interviewee ID: **(D)**

Position of Interviewee: Chief Estimator

Industry Experience: 30 years

Gender: Male

Race: White

Company's CIDB Grading: 9GB

Interviewer: How has your tendering experience been with public sector construction work?

Interviewee: Tendering for public work is ok, although there is a lot of bureaucracy. Settling of final accounts takes long. There is always whining and moaning by government. It's bureaucratic, nothing really works for them or anybody.

Interviewer: Have preferential procurement policies impacted on your company in any way?

Interviewee: Not really a lot has changed in the industry. Preferential procurement policies have not really impacted on the company.

Interviewer: How about any empowerment legislations?

Interviewee: Well with empowerment legislation, 35% of our company is now black-owned and managed. And we are obviously, look to empowering, to empowerment; we haven't got a problem with empowerment. In fact the reverse, we are trying to improve our percentage of empowerment. So we actually realise that the future comes from the previously disadvantaged and that's where we are going. So we gonna continue to build our percentage of PDIs in our company.

Interviewer: What do you see as the main problem or challenge?

Interviewee: The biggest problem at the moment is that it is difficult to get people from PDI backgrounds who are doing engineering and that kind of things, we get very few applicants from PDIs and we try but its just the way it is. Guys like going into BCom, consultancy or other fields, they don't like to get their hands dirty. Availability of skills is a problem.

Interviewer: To what extent do you think preferential procurement policies are being realised in practice?

Interviewee: Policies are being achieved. For government work, we have to put forward a procurement plan we have to prove it's gotta be audited we gotta prove that the PDI portion of our businesses being adhered to. And obviously a good portion of our subcontractors and some of our suppliers are PDIs and PDEs. Obviously we continue to work with these guys. But in the Western Cape, it has been like this for ever, certain trades such as plastering, painting has been run by PDIs and PDEs anyway.

I am sort of office bound. I attend pre-contract meetings. We go out to various people and get prices at the time of tendering. You win tenders by getting the best prices, by getting the lowest prices though not necessarily lowest tender wins, always goes with best lowest tenders. Just because a guy gives a low price, it doesn't mean that we will take him, he has to produce guarantees e.t.c.

Interviewer: What factors can you identify as constraining government's achievement of empowerment?

Interviewee: We don't really have a problem achieving targets for empowerment because we have got 35 % of our company is black owned and managed number one. Secondly when you add up all our subcontractors that are PDI then obviously we get to whatever percentage. Invariably, the percentage is set on the bigger jobs at about 40%. We can get to 40% easily, there are times when we get to or 70%. We don't have any problem achieving those goals.

Interviewer: So what are you saying about government's achieving its goals?

Interviewee: I would say government is achieving. The policies were kind of forced on the industry but it's not something that we resist. We realise that its necessary and we will continue to work in that vain. We are trying to enlighten and uplift people and it will continue. But skills and finance is problematic for most.

Interviewer: Are you familiar with the construction transformation charter or the BEE scorecard?

Interviewee: Yes. Concerning the legal stuff, I've read all the legalise and our concern is to achieve the targets, I don't go into the details about all the details that have been written about the PDIs and all that. Since we meet the targets, we have no problem, for those who do are unable to meet the target, may be they may have problems with it but then they must stay away from government type work. It all depends on where you want to work or which market you want to be in. We want to be able to do both public and private work right across the board and uplift right across the board. It doesn't stop us going for going work but we don't actively seek government work unless it is work that we would like to do.

We embrace the charter. We are trying to become fully compliant. The problem has been, really the fact that we can't get PDI's to join our industry to go out on site to get the hands dirty sometimes, I am not talking about those who dig but site agents, contracts managers, project managers e.t.c. We look for those people but they are scarce to find. Tertiary education are not producing black engineers, the few go into consultancy.

We are also CIDB registered. Everything that we do is gathered around that. CIDB GB9, allows us to do unlimited tenders. But the moment you go to below 6 which is below R10 million, obviously the competition is huge. There are thousands of contractors that are literally able to do that kind of work some of them not properly but the issue is that we cannot compete on an overheard basis with people who run businesses out of a bakkie and own one wheel barrow. So we do not tender for such kind of work. We seldom work under R10 million.

There is lots of small government work that we are not interested. There are lots of small contractors that would run and do those small jobs. When we start getting to R100 000 plus, then we will look at it very seriously regardless of where it is coming from. There is less work or projects in the higher grades but there is also few people going for it. You know, so we don't believe it's necessary to look for a lot of small work in order to meet our turnover goals, we'd rather wait to target the bigger jobs.

Interviewer: Have you ever worked in a joint venture?

Interviewee: Yes, a number. We have been involved in a number of JVs. We need to do it less and less now because of our 35% PDIs in the company. Obviously, in the earlier days when we didn't have this sort of percentage, we went into JVs to boost targeted goals but with our 35% and the percentage of PDEs that we subcontract work, we easily achieve the targets. So we don't need to go into JVs with PDIs. We'd rather employ them as subcontractors rather than go into JVs with them.

Interviewer: Why do you prefer that?

Interviewee: Because JVs have 2 advantages and 2 disadvantages. The single disadvantage is that you share percentages, ok, say if you into a JV on a 30:70, and if you make a profit at end of contract, 30:70% will be split. If the contract is reversed, you make a loss, you will seldom find that the PDI JV partner bringing in the 30% generated loss into it. It seldom happens. Its fine when we are making money, the moment we lose money that's the end of the story because they haven't got it. They don't share the risks, they only want to share the profit you know.

Interviewer: So is that the major reason?

Interviewee: For sure that's the major, absolutely you know. We work with PDEs on that basis but it's becoming less and less important to us because of our own company involvement.

Interviewer: What's the other disadvantage?

Interviewee: The other disadvantage is that because the major contractors, the big companies like ourselves normally take over the lion's share 20:80 or 30:70 is that the responsibility that the smaller JV partner brings to the party is seldom in the same proportion you know because we stand to gain more, they also stand to put less into it. So if there were a requirement for 10 cranes, for example, then they would be unable generally to bring 3 cranes to the party on a 70:30 JV. The same thing with, when it comes to taking responsibility for that contract, they are always on the toe, they are there, they are helping out but they do not really take the leading role. They don't take responsibility and when our people might have to work all weekend in order to meet project goals, you might as well find the JV partners do not necessarily follow that line.

Interviewer: What do the PDEs or minor partners bring to the table?

Interviewee: Well, they were bringing is empowerment points to the table as such , that is why it is happening less and less because we have got people that work with us that work in our company who are committed to the same goals and we just don't need a helping hand. As I said, they are very happy to share profits but unhappy to share losses.

Interviewer: Was it more advantageous to do JVs before?

Interviewee: Yes but it's now not as important. Not at all.

Interviewer: What criteria were used to choose the JV partners?

Interviewee: Criteria for choosing partners is, we are often approached by PDEs. We would look at their capabilities, their work ethics, any qualification that they would bring to the table, how long they have been in business, experiences e.t.c and there are a lot of smaller companies that need the financial backing of the big companies and all they can bring to the table is the expertise and the people and if they haven't got the two, then is there any reason why a JV should actually be gone into? It actually doesn't just happen.

We have just won this contract across the road, an airport extension to the value of R660 million that is a JV contract but that's with another major contract. They will bring a certain number of PDIs and we will also bring a certain number of PDIs. But when it comes to R660 million contracts, none of these smaller contractors can look at them anyway, with big risks you gonna get fewer and fewer of those guys coming to the table. But certainly we'll be bringing in people such as our plasterer and all those kind of specialised contractors

who will certainly be working with us. They must understand because its their business that they will be working on Saturdays and Sundays because if we get penalised, they get penalised too whereas with JVs it is a different story.

Interviewer: How different is it?

Interviewee: They are very happy to share the profits and unhappy to share the loss. There are a couple of companies out there who we know are PDEs and we will gladly do JV with. But understand though its gotta be a two way street, but if we have got the project, why should we start dealing it up? If a smaller contractor approaches us because they have a big project and comes to us that this job is just too big for us, we would say yes, fantastic and we see what they can bring to the table. But if the guy can only bring the contract to the table, it may still be worth our while to pay the guy some form of withholding fee but if they have been in the industry for some time they will bring something, it could still be people.

Interviewer: What do you contribute to the joint venture?

Interviewee: Smaller guys usually cannot bring guarantees so the JV or major partner pays for guarantees e.t.c. You know you can only do a 50:50 JV with someone who can bring 50% to the table. If a guy is going to bring 10% to the table, then you don't really need the guy. If a guy gets a job that is too big and wants to use our finances and expertise, we will gladly do that.

In JVs, the other reason we like to partner with them is to uplift them depending on the type of project. But if a guy has only dug holes, unfortunately he can only dig holes. There is very little expertise that a guy who has just started can bring to the table. He hasn't got the expertise or plant it can be the people skills. The people skills can only come from the tertiary and its just not coming. Everyone is looking for skills. Even subcontractors. Everyone is battling for skills. The problem with the construction industry is too cyclic. When things are bad, people get retrenched, what will encourage them back into construction? It doesn't just work. If it was constant, we would be able to train more. We sponsor many people to do different kinds of training.

Interviewer: Have you had any problems in tendering for public sector work?

Interviewee: Yes. The problems are getting payments, getting payments in time, getting final accounts sealed and paid takes long which makes some large companies Whereas with private developers, the process is quicker. Government work can take years to settle. And I mean that is why to stay away from government work. But having said that, I mean, we tender on government work. We are doing a R150 million job hospital for the provincial administration in Worcester at the moment. We came second on a tender for Paarl

hospital. So we are looking at those kind of jobs and we certainly we haven't a problem working on government projects. But I can tell you there are medium to big companies that won't even look at government projects.

SAMPLE 2

Date: 24/10/2006

Time of Interview: 09:25 hrs

Place: Rondebosch

Interviewee ID: **(K)**

Gender: Female

Race: Black

Position of Interviewee: Owner

Industry Experience: 5 years

Firm's CIDB Grading: 1GBPE

Interviewer: What have your construction tendering experiences been with the public sector?

Interviewee: Tendering for public sector is a bit difficult because there is too much competition now. So I can say I am standing a chance of about 30% to get the tender because I will give example. I bought about 6 tender documents for this month but I put in and they responded to me for one that I was unsuccessful, the others are pending. So that's the problem with the tender.

Interviewer: How do you find the tender documentation?

Interviewee: The tender documents, I don't price them myself, I get somebody to price them, a QS.

Interviewer: Why, and how is the cost?

Interviewee: At the moment, I'll be honest with you, the lady who is doing my tenders I will only see to her once I have been granted a tender. In the past I had to pay R450, for instance there is a guy from BON, they said they would help us with tendering but they still charged. Especially for people who are only starting in this industry, they have no money, they must purchase the document, go to QS to price them, and obviously it will be a cost.

Interviewer: What other problems do you encounter?

Interviewee: I will be honest with you, I have no background in construction, I had to learn and there were times when you would employ a bricklayer because I also don't know I will take a bricklayer but my foreman will see that the guy cannot build. Until, a foreman will

come to me and say, 'mama, are your walls right'? And then he will tell me stand in this corner and then you see that it's going like that. Those are the experiences you get when you are raw, raw to the industry.

When I started to employ them I would pay them per day say R150 or R200 but sometimes he will lay only 100 bricks and sometimes we even have to break the walls if the wall is skewed, you must break it and redo and to redo it that's a loss to you and yet you pay him R150 a day. But if you can get good guys, but now I know even the minute he touches a brick, I can tell exactly if he can lay the brick or not. Now I don't say that I will pay R150, I will ask him what your pay? He will say I was getting R190. I'll say I won't promise you R190, but after 3 days I will tell you if I will pay R190. Then after 3 days if its not good, you tell them that the quality is not very good, either you take R120 or nothing. Because you get the dagga boys who have been watching bricklayers laying bricks but they have never practiced that but they think they can, so they come to you and say the have been bricklayers and can lay bricks then they start messing you around.

Interviewer: So how did you handle those kinds of situations?

Interviewee: Like for instance, I never went to school for measuring, I learnt it the hard way, on the job. Like for instance that window is about 180mm, maybe the window is supposed to be 20 mm away from that wall and then the bricklayer will lose 20 mm, you'll have to break it. You will have to redo and it costs money. Then I used to depend on QS's from Pentech, you name it. There are also learners then I said to myself, no ways, I am not going to let anyone measure for me I am going to measure for myself, that's how I learnt how to measure.

Interviewer: How is the competition with the Mama Special tenders?

Interviewee: I'll give you an example now, with all the Mama Specials we had this year, only 2 tenders have been granted to women. The other thing you must understand,, you know, this is a man's world. There are some things that women are not aware of even if you think you do the tender correctly sometimes you find out that there is a page you were supposed to sign and then it ends up invalid. And the thing is that also if you have been unsuccessful, they must call you in, sometimes you find from the list that your name is in the average range but you don't get the tender, they can call you to tell you and explain why you didn't get it, either you didn't fill in the document properly or there are some documents you were supposed to issue and you didn't but it doesn't happen.

Interviewer: So where did all the other Mama Special tenders go to?

Interviewee: I am not sure what criteria the public sector clients are working on. I will give an example, normally I know price as number one, but sometimes number one doesn't get

a tender then you see that number 7 gets the tender. It's normally like that. And the other thing, when they mentioned the Mama special story, I thought the Mama Special were only for women, I didn't know that anyone can just go and buy the document. They should have just left it for the Mamas. And the other thing you must know, also if they could have on Mama Special try and put on grade 1 and grade 2 because most of us we are on grade 1 and 2, so to have on grade 3 and grade 4, definitely the women cannot tender for those. And there was one that said GB2, if you are GB1PE, you can tender but you don't stand a chance if you have a GB2 who has the same price as you because they are on that grade already.

Interviewer: What CIDB grade are you in?

Interviewee: I am still 1GB. I decided to go on entry level although I've been trading for quite some time because I have built 14 town houses with M&R. They are still standing that was 2003, they are still standing today not cracked but I then thought, when this thing came into the picture that let me go on entry level and then I work myself up. For instance, I am subcontracting painting now. I am painting 5 houses outside of Cape Town, so the value of the job is about R85 0000 Then once the work is done, I get my monies, everything, the lady will issue me the proof, everything, then I will take to CIDB so they can put me on the next grade which is 2GB.

Interviewer: What advantages are there for you to register in GB1?

Interviewee: The competition at entry level is stiff. You'll find out that most of the grade1's are fairly new. They will end up submitting and not having enough information in the document so I think that that is the thing, they don't stand a chance of getting the tender because of that. It has been suggested even at the summit; people who are new in this industry should go for a quotation not for a tender. The one at customs house, Sakhasonke that is where I started also with quotations and then once you know exactly how to fill in a quotation, the next step is you will be able to fill in a tender document but most people don't want to go that route they just want to go straight for tender.

Interviewer: What kind of relationship is there between the sub contractor and main contractor?

Interviewee: And also the subcontracting route is the best because if you know nothing about the industry, you will be able to learn just the know-how of the industry. You know, for me to grow, I started growing from subcontracting especially if you can manage money because you got have nothing to lose. If you have got good guys who can do the work, the only thing you do there, sometimes you don't even have to bring any wheelbarrows on the

site, they supply you with everything, you just have to supply labour then mostly fortnightly, they will pay you money. To me it has helped out a lot.

Interviewer: Have you been in a joint venture before?

Interviewee: JV, we only established a JV last year, me P, and S that is 3 woman-owned BEE companies. Also we only put in 2 tenders for houses in Mitchell's Plain we came third but then we couldn't get the job they said no the price was too high. We also tendered for the houses outside Cape Town on your way to Saldhana Bay and just now they said they are going to re-tender it so they are inviting us again. That's the only JV I am in. I have also tendered on my own recently. I think I stand a good chance. They are waiting for my NHBRC certificate which I didn't send yet only to find I didn't submit my CV also.

Interviewer: How were the partners chosen in the JV?

Interviewer: I am telling you, it just came up to my mind when I heard about this tender then I thought we belong to SAWIC, the three of us. Then I approached P and then I said to P what about S then P said I think S will be fine then we approached S also so we quickly had to fill in this JV, we were not registered then so we went on JV as L construction. And then it happened that me, S and P, we share some stuff, we were all born in September, you see, so at least we click.

Interviewer: How important is the clicking for the JV?

Interviewee: A lot. The other thing we have is trust. If you find something we tell each other. Like S got this invitation for SAPS to be on the data base of the police services. So we went there and they asked, apparently the people that they called there are only those who were on the list and my name was not there so I said off course my name won't be there because I was not informed but because of her I came. It was just my luck for me, as a result, just yesterday I got a number yesterday that I have been awarded a quotation for a job. Because I believe, if it was going to be mine, it will still be mine I don't have to keep it, what is the point of keeping and I don't even get it. At least if you get it, you are my friend, I must be happy for you.

Interviewer: Did you discuss the roles each one of you will play and how to share?

Interviewee: We discussed the sharing of profits and the roles seeing that I have been long in building I will do the building of the structure, S is more on electrical, she will do electrical and P, P only came in, she is only 2 years, she came only last year, then P will also have a share but meanwhile, she will learn from me, from S. I will learn from her, I will learn from S.

Interviewer: Do you have a preference with whom to form a joint venture?

Interviewee: You know the thing is, it's better with blacks only because we are sick and tired of window dressing. It is still window dressing. Like for instance yesterday I went to this meeting, they want me to partner with them, they are quite a big company. But they told me straight away we believe you are hands-on, we believe you are on site everyday but we don't want you on site, we want you to be on management level. We want you to learn the nitty-gritties of the management. This other lady even said to me, you know what, that's where they beat you because they know that you know nothing what's happening there, what money is coming in, they will give you anything and you will just say thank. But we haven't finalised it. We met yesterday but I must think about it. I must also ask around. They will give me something in paper then I will see if it's fine or not because I just don't want to be, what's the word, excited about it and at the end of the day I am messed up. I am a person that likes to go slow.

Interviewer: Are you familiar with the construction charter?

Interviewee: Well, we were given a lecture on transformation charter that was organised by SAWIC, through DTI. I must be honest that's what we always say, they will give us all these things but when you get home, you just burry them. I have not had time to look at charter closely or read them but I have the documents.

Interviewer: What effect are the policies having on the industry?

Interviewee: I can say procurement polices are essential to the industry. The effect is positive for those who know where they want to be tomorrow.

Interviewer: What do you mean?

Interviewee: I don't know how I can explain that.

Interviewer: To what extent do you think the policies are being achieved?

Interviewee: What I want from them, like the minister said the other day, they have R120 million set aside for women on roads infrastructure, I don't know if its possible so that the emerging contractors can be with the big companies, I know they are busy making money, they don't have time to baby-sit us but they have to baby-sit us to some extent. I know they don't need to just take people, as I said I know I have done Civils, I have been doing footpaths, I've installed toilets in some informal settlements, I've done that in Fish Hoek, in Hout Bay so that is how I have some know-how to do infrastructure. If they can just put us there with big companies, if you manage, you manage, if you don't, they must kick you out because they have to make money.

I gave an example at the summit, we must stop wanting money. When I wanted to do construction I volunteered myself for 6 months. I approached this man that can I come to

your site, you don't have to pay me because I just want the knowledge. And I am telling you within 4 months the guy said to me, 'sisy I think now you can be on your own. Then he said to me, go and get yourself some business cards, wherever you see a site just drop your business card'. I am not lying to you, within 3 days, I got a phone call, he guy asked me do I have workers? I said I have workers, how many? I lied. I said I have got 4 artisans and I have some labourers so he asked me have you done some work? Then I said not on my own, I am working now, they were painting the new pick n 'pay at Blouberg, then I said I am working there. So he said you must come and start on Wednesday but I had no wheelbarrows, I had no spade, nothing. I went back to this guy and told him that this guy called me said I must start work on Wednesday but couldn't start on Wednesday because I wasn't ready but luckily for me, this guy said 'I will give you 2 artisans and 2 operatives and you will get yourself some labourers. They will get you some labourers'.

Interviewer: Is that how you started?

Interviewee: Yes, that's how I started. He gave me work, he gave me work. He actually mentored me. By the time I went to build the 14 houses for M& R I was ready. If you don't know, put the money on the side and just take yourself as if you are unemployed, you have no income, just go there to the site in the morning until 3 o'clock. Everyday until you get the know-how of the industry.

Interviewer: So what were you doing on the site for those 3 to 4 months?

Interviewee: I was observing on the site, the practical now. You know, each and everything has got its own terminology. Go and learn the terminology of the construction industry. If people can just do that for themselves, I know it's not everyone who can go to Pentech. This gentleman even said to me, 'if you want to do theory, it will take years because he went to school. I can copy you all my books and in your spare time you can study but I can tell you the best thing is to be on site'.

One more thing, also the other way to survive is to have a political background but networking is vital to opening closed doors. SAWIC won't get you the job but networking will

APPENDIX 8: PARTICIPANT'S CONSENT FORM



UNIVERSITY OF CAPE TOWN

CONSTRUCTION ECONOMICS AND MANAGEMENT

Centlivres Building . University of Cape Town. Private Bag . Rondebosch . 7701 . South Africa

Telephone: +27 (0)21 650-3443

Fax: +27 (0)21 689-7564

E-mail: cemsec@eng.uct.ac.za

<http://www.cons.uct.ac.za>

Head – A/Professor Keith Cattell

Dear Sir/Madam,

RE: Addressing Ethical Issues on Research Participation

Kahilu Kajimo-Shakantu has received approval from the University of Cape Town to undertake a research project entitled:

An Investigation into the responses of the construction industry to preferential procurement in South Africa

The information will be obtained by conducting Individual or Focus Group Interviews. We will appreciate your willingness to participate in the study. All information obtained will be kept confidential and no participant will be identified in the research report. You are at liberty to withdraw from this project at any stage should you feel not comfortable with the information which we are requesting from you.

I have read the above and agree to participate in this study on the understanding that:

All information will be confidential

I am free to withdraw at any stage without jeopardy to UCT or myself.

Signed

Date

APPENDIX 9: SUMMARY SHEET OF STUDY PARTICIPANTS

Interviewee Symbol	Position	Gender	Race	Experience in Construction Industry (years)	Been in Joint venture		Firm's year of Establishment	Firm's Number of years of Establishment	BEE Status Ownership %		Firm's CIDB Grading	Company structure	Firm's Historical Background
					Yes	No			Gender (F) %	Race (B) %			
A	Public Manager	M	C	9		N	1999	7	50	100	3GBPE	CC	PDE
B	Owner	M	C	10	Y		2001	5	0	100	1GBPE	Sole Trader	PDE
C	Director	M	A	8	Y		2001	5	0	100	2GBPE	CC	PDE
D	Chief Estimator	M	W	30	Y		1956	50	5	35	9GB	Pty	HEE
E	Owner	M	C	9	Y		1997	9	50	100	4GBPE	Partnership	PDE
F	Building Inspector	M	C	30	-	-	-	-	-	-	-	-	-
G	Director/Project Mgr	F	A	3	Y		2003	3	100	100	2GBPE	CC	PDE
H	QS/Director	M	A	10	Y		1998	8	-	-	-	CC	--
I ₁	Managing Director	M	W	25			1943	63	0	0	-	Pty	HEE
I	Manager	M	W	25	Y		1999	7	40	67	6GBPE	Pty	PDE
J	Senior Estimator	M	W	25	Y		1946	60	0	25	9GBP	Pty	HEE
K	Owner	F	A	5	Y		2003	3	100	100	1GBPE	CC	PDE
L	CEO	M	C	12	Y		1998	8	33.3	75	2SFPE;5EEPE;6GPPE;6SAP EE	CC	PDE
M	Financial Manager	M	W	4	Y		1994	12	0	10	8GB	Pty	HEE
N	Owner	M	W	50	Y		1969	37	0	0	3GB	CC	HEE
O	Contracts Manager	F	C	2	Y		2001	5	30	100	6GBPE	CC	PDE
P	Owner	M	I	38	Y		1986	20	0	100	3GBPE	CC	PDE
Q	Owner	M	C	39		N	1997	7	50	100	3GBPE	CC	PDE
R	Managing Director	M	I	24	Y		1971	35	50	100	6GBPE	Pty	PDE
S	CEO	M	I	30		N	1997	7	40	100	3GBPE;4SAPE;5MEPE;7CE PE	Pty	PDE
T	Administration Director	F	I	6		N	1997	7	40	100	4GBPE;4SAPE;5MEPE;7CE PE	Pty	PDE
U	Project Manager	M	A	25	Y		1995	11	50	100	5GBPE	CC	PDE
U ₁	Project Manager	M	A	25	-	-	-	-	-	-	-	-	-
V	Manager	M	C	22		N	1993	13	20	100	7GBPE; 2EEPE	CC	PDE
W	Chief Director	M	W	25	Y		1994	12	0	33.3	5GB	Pty	HEE
X	Senior Estimator	M	W	25	Y		1989	17	10	26	8GB	Pty	HEE
Y	Site Agent	M	C	30	Y		1996	10	30	100	7GBPE; 7CEPE	CC	PDE
Z	Project Manager	M	I	3		N	1976	30	100	100	3GBPE	CC	PDE
ZA	Estimator	M	W	25	Y		1956	50	3	43	9GB	Pty	HEE
ZB	Business Develop. Manager	M	W	25	Y		1956	50	3	43	9GB	Pty	HEE
ZC	Contracts Manager	M	I	20	Y		2004	2	0	33	3GBPE	Pty	PDE
ZD	Director: SCM	M	C	25	-	-	-	-	-	-	-	-	-
ZE	Director: PW	M	A	10	-	-	-	-	-	-	-	-	-

APPENDIX 10: NUMBER OF QUALIFIED PERSONS

Financial Capability	Minimum Number of full time equivalent qualified persons required for registration in a category of works				
Grade	Maximum Value of a Contract that a Contractor is considered capable of performing (R)	General Building (GB)	Civil Engineering (CE)	Mechanical Engineering (ME)	Specialist Works (SW)
1	200 000	No requirement	No requirement	No requirement	No requirement
2	500 000	No requirement	No requirement	No requirement	No requirement
3	1 500 000	No requirement	No requirement	No requirement	No requirement
4	3 000 000	No requirement	No requirement	No requirement	No requirement
5	5 000 000	No requirement	No requirement	No requirement	No requirement
6	10 000 000	No requirement	No requirement	1	1
7	30 000 000	1	1	2	2
8	100 000 000	2	2	3	3
9	99 999 999 999	3	3	4	4

Source: CIDB (2007)